

Part II. Administrative Inspection Warrants

Many state and local laws authorize public officials or employees to inspect certain places or records. For example, wildlife law enforcement officers and marine fisheries enforcement officers may inspect hunting and fishing equipment and game to see whether those who have used the equipment have complied with the game and fish laws.²¹⁹ Housing inspectors may inspect houses to determine whether they comply with the building code.²²⁰ Division of Motor Vehicles (DMV) license and theft inspectors may inspect automobile dealers' records.²²¹ These inspections are almost always conducted without any objection by the person who is subject to the inspection. (Remember that the person who must consent to an inspection of a rented apartment is the tenant, not the landlord.)²²² However, those who make these kinds of inspections must know what to do if someone refuses to allow the inspection.

Authority for Issuing Administrative Inspection Warrants

North Carolina law authorizes the issuance of an administrative inspection warrant.²²³ This warrant may be issued to state or local officials or employees who have been designated to carry out a legally authorized program of inspection. (The terms *officer* and *inspector* will be used throughout this section to refer to all those authorized to conduct inspections and execute warrants.) The statute, ordinance, or administrative regulation must specify the circumstances under which an inspection is authorized—for example, housing inspections will be required once every two years. If the inspection authorization exists, the warrant may be issued for either of two reasons:

1. The property is naturally part of a program of inspection; the general plan for enforcement of the statute, ordinance, or regulation is based on reasonable standards; and these standards are applied neutrally to a particular business or place.²²⁴
2. There is probable cause to believe that a condition, object, activity, or circumstance exists that justifies the inspection.²²⁵

Reason 1, above, exists when a program of inspection has been authorized in an area where the property is located. For example, a town might decide to inspect all the houses in town to see whether they comply with the local housing code. A certain area of town is designated for inspection in May, but the owner of one house refuses to admit the inspector. The warrant could be issued in that case by showing that (1) the town's ordinances authorize housing inspections, (2)

the housing office has set a schedule for making the inspections, (3) the schedule is reasonable and is applied neutrally to all houses, (4) this house is within the area of inspection this month, and (5) the owner has refused to allow the inspection.

Occupational Safety and Health Act (OSHA) inspections of businesses involve complex issues that will not be discussed in this book.²²⁶

Reason 2, above, exists when the inspection occurs for a reason other than a periodic inspection of an area. For example, an inspection may be made when (1) a housing inspector receives information that rats have been seen near an apartment building, (2) the inspector sees rat feces by the building, and (3) a tenant complains about rats running throughout the apartment's hallways.

Note that neither justification for obtaining an administrative inspection warrant requires a probability that a crime is being committed on the premises.²²⁷ If there is probable cause to believe that a crime is being committed, that information is a particularly persuasive version of reason 2. It could also be used to obtain a regular search warrant.

Usually an administrative inspection warrant is not sought until the owner has refused to allow a voluntary inspection, but a refusal is not a prerequisite to issuing a warrant.²²⁸ If inspectors believe that their inspection might be resisted, they might want to obtain a warrant before they attempt to make the inspection.

Issuing an Administrative Inspection Warrant

The Judicial Official's Territorial Jurisdiction

Only a judicial official may issue an administrative inspection warrant. Like search warrants, administrative inspections warrants do not always have statewide validity.²²⁹ Magistrates, clerks of court, and assistant or deputy clerks generally may issue warrants to inspect only places within their county.²³⁰ District court judges may issue warrants to inspect anywhere within their district. Superior court judges and appellate justices and judges may issue warrants to inspect anywhere within the state.

Warrant Forms

The Administrative Office of the Courts (AOC) has printed two forms (reproduced on pages 162–65) that may be used for issuing administrative inspection warrants. AOC-CR-913M provides an affidavit and a warrant for inspections based on a particular condition or activity—reason 2, discussed above. AOC-CR-914M provides an affidavit and a warrant for periodic inspections—reason 1, discussed above. These are “model” forms; that is, they are not printed for distribution but are available from the office of the clerk of superior court for photocopying as necessary. They are also available from the AOC's Web site at <http://www.nccourts.org/Forms/FormSearch.asp>.

Completing Warrant Forms

When inspectors apply for a warrant, they must complete an affidavit—which must be signed under oath or affirmation—stating the reason for the inspection. The judicial official may examine the inspector about the contents of the affidavit. The premises to be inspected must be described with the same particularity as is required for a search warrant.

The warrant must bear the date and hour of issuance. This is important because a warrant must be executed within certain time limitations, discussed below.

Although not legally required, at least two copies of the original warrant and affidavit should be made. The issuing official should keep one copy, to be filed in the clerk's office. The second copy should be given to the person whose property is to be inspected. The executing officer will return the original warrant and affidavit to the clerk's or magistrate's office after it is executed. The executing officer may want to make a third copy for his or her files. Remember that the affidavit and warrant should be attached to each other if they are not on a single sheet of paper.

Periodic Inspection Warrant

The affidavit for an administrative inspection warrant based on a periodic inspection must indicate the condition, object, activity, or circumstance for which the inspection is being made, but sometimes a general statement may be sufficient. What follows is a fictitious example:

I, I. N. Spector, Livingston housing inspector, being duly sworn and examined under oath, state under oath that there is a program of inspection authorized by G.S. 160A-424 and Livingston City Ordinance § 18.4 that naturally includes the property owned or possessed by Harold R. Day and described as follows: a one-story yellow frame residence at 140 Jones Street, Livingston, North Carolina. The program of inspection referred to covers the area of the city of Livingston, specifically all residences on Jones Street and Main Street, and is being conducted for the purpose of checking or revealing the following: unsafe, unsanitary, and hazardous conditions. This is part of a periodic ten-year inspection of plumbing and electrical facilities. Ten-year periodic plumbing and electrical inspections of residences are justified by the National Building Code. All residences on Jones Street and Main Street are being checked at this time. This inspection program is a legal function of the Livingston Housing Department and is under the supervision of George Hollings, director of the Livingston Housing Department. Mr. Day has refused to allow me to inspect his house.

Warrant Based on a Particular Condition or Activity

Generally, an administrative inspection warrant based on a particular condition or activity should provide the facts—not just conclusions—that establish probable cause to believe that a reason exists to inspect a particular place. What follows is a fictitious example:

I, I. N. Spector, Livingston housing inspector, being duly sworn and examined under oath, state under oath that there is probable cause for believing that there are unsafe, unsanitary, and hazardous

conditions (see description below) at the property owned or possessed by Frank W. Brown and described as follows: a brick apartment building at 135 Jones Street, Livingston, North Carolina. The facts that establish probable cause to believe this are as follows: Two days ago Sam and Sylvia Wilson, who live on the street on which the above-described apartment building is located, told me that the plumbing in the apartment building does not work. They know about the plumbing because they both have been in the building in the past week, specifically Apartments 1 and 5, and sought to use the bathrooms there. The toilets did not work and were leaking. Yesterday Edward Duncan told me that he had visited Apartment 4 in the above-described building that day so he could consider whether to rent it. He saw water on the floor, broken windows, and rat holes. He also smelled the odor of urine and excrement. Mr. Frank W. Brown, the owner of the apartment building, has refused to allow me to inspect the building.

Inspection of a fire scene. As discussed in Chapter 3, the United States Supreme Court has ruled that fire personnel and others may enter a home or business without a warrant and remain there until they have put out the fire and have determined its origin, so that it will not start again after they leave.²³¹ Generally, however, once they leave the fire scene,²³² they must obtain an administrative inspection warrant or consent if they want to reenter the home or business to investigate the fire's origin further.²³³ If they have information that establishes probable cause to believe that the fire was caused by a criminal act, such as arson, they must obtain a search warrant instead of an administrative inspection warrant before they reenter to search.²³⁴ If, while they are inspecting the premises with an administrative inspection warrant, they determine the fire's origin and develop probable cause to believe that the fire was caused by a criminal act, they must obtain a search warrant to search the rest of the premises.²³⁵

The following fictitious example shows how an officer might complete an affidavit to obtain an administrative inspection warrant for a particular condition or activity to inspect a fire scene:

I, Robert Montjoy, fire chief of the Millburn Fire Department, being duly sworn and examined under oath, state under oath that there is probable cause for believing that there is real and personal property that has been damaged or destroyed by fire at the property owned or possessed by Mr. and Mrs. J. K. Lamp, Jr., and described as follows: a two-story brick residence with blue trim and red shutters located at 919 Simmons Lane, Millburn, North Carolina, and occupied by Mr. and Mrs. J. K. Lamp, Jr. The facts that establish probable cause to believe this are as follows: The residence described above was partially destroyed by fire three nights ago on September 21, 2002. A preliminary investigation by Fire Inspector James Rhodes immediately after the fire was extinguished indicated that fire may have begun from a kerosene heater in a bedroom located on the second floor. However, additional investigation is necessary to determine the cause of the fire because Rhodes and other fire officials had to leave the Lamp residence shortly after the fire was extinguished to handle a major warehouse fire elsewhere in Millburn. I intend to inspect

the kerosene heater, all electrical wiring in the house, and any other evidence that would help to establish the cause of the fire. Mr. and Mrs. Lamp, who were shopping when the fire began, have refused to allow my entry for the inspection.

G.S. 58-79-1 authorizes inspections to determine the cause of fires in which property has been damaged or destroyed.

Execution of an Administrative Inspection Warrant

An administrative inspection warrant is valid for only twenty-four hours from the time it is issued. It must be personally served on the owner or possessor of the property and executed between 8:00 A.M. and 8:00 P.M., and it must be returned to the clerk's or magistrate's office within forty-eight hours—whether or not it is executed. But if the warrant is issued to inspect the cause of a fire under G.S. 58-79-1, it may be executed at any hour. It is valid for forty-eight hours after its issuance, and it must be returned to the clerk's or magistrate's office without unnecessary delay after its execution or after the forty-eight-hour period if it is not used.²³⁶

The warrant need not be personally served on the owner or possessor if the executing officer cannot find that person after a reasonable effort to do so. The officer may inspect the premises in the owner's or possessor's absence—still between 8:00 A.M. and 8:00 P.M., except for fire inspections—but the officer must leave a copy of the warrant in a conspicuous place so the owner or possessor may see it later.²³⁷

Anyone who willfully interferes with officers in entering the premises or making the inspection is guilty of resisting, delaying, or obstructing public officers in performing their duties, a Class 2 misdemeanor.²³⁸ Generally, verbal abuse alone is not considered a violation unless it is so severe that it keeps officers from talking to witnesses or otherwise carrying out their inspection.²³⁹ Reasonable force may be used to accomplish the inspection, if necessary. Officers may inspect the premises as extensively as is reasonably necessary to carry out the purposes of the inspection.

If, during the inspection with a warrant, an officer discovers evidence of a crime not related to the purpose of the inspection, North Carolina law prohibits the use of the evidence in any civil, criminal, or administrative proceeding or as a basis for obtaining any warrant.²⁴⁰ For example, if a housing inspector saw marijuana while inspecting a house with a warrant for housing code violations, a law enforcement officer could not use that

information later to obtain a search warrant to search that house. This prohibition does not apply, however, if the inspection was conducted with consent or if the inspection could have been made constitutionally without a warrant—for example, an emergency inspection—even though a warrant was used.²⁴¹

Emergency Inspection without a Warrant

Sometimes an inspection may be made without a warrant in an emergency when officers have the authority to inspect, but they reasonably believe that if they took the time to obtain a warrant, the condition or object for which they are making the inspection would likely disappear. For example, wildlife law enforcement officers and marine fisheries enforcement officers would have authority with some of their inspection powers²⁴² to inspect without a warrant if the evidence (wildlife, seafood products, and the like) would probably disappear if they took the time to obtain a warrant. These officers, whose duties include looking for unlawfully possessed things that can be disposed of easily, will sometimes encounter situations when an emergency inspection is justified. But building inspectors and others whose jobs are to inspect relatively permanent conditions will rarely be justified in conducting an emergency inspection, particularly an inspection of a home—a place entitled to the greatest protection of privacy under the Fourth Amendment.

Wildlife law enforcement officers and marine fisheries enforcement officers also are authorized to arrest for the misdemeanor offense of refusing to exhibit a license or to allow inspection of weapons, equipment, fish, or wildlife.²⁴³ A person who refuses to allow an inspection and is told that he or she will be arrested for that refusal may reconsider and permit the inspection.

Warrantless Inspections of Pervasively Regulated Industries

The United States Supreme Court has recognized the constitutionality of legislation that authorizes warrantless administrative inspections—or criminal prosecution or a civil penalty for not permitting a warrantless inspection—of commercial property of certain industries or enterprises (for example, mining, gun dealers, or liquor dealers) that are subject to pervasive regulation.²⁴⁴ This subject will not be discussed further in this book.²⁴⁵