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Residential Rental Property Inspections, Permits, and Registration: Changes for 2017

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Local governments establish residential rental property inspection, permit, and registration (IPR) programs to ensure that residential rental properties within their jurisdictions are maintained in a safe and decent condition. Such programs range in scope from the comprehensive inspection and certification of every rental unit prior to occupancy by a tenant to programs focusing only on properties with a history of problems to spot-checking systems that inspect a randomly selected portion of rental units within the community. North Carolina local governments have established such IPR programs pursuant to their authority to conduct periodic building inspections for unlawful or hazardous conditions (G.S. 153A-364 (counties) and G.S. 160A-424 (cities))[1] and to regulate and license businesses (G.S. 153A-134 (counties) and G.S. 160A-194 (cities)).

In recent years, in an attempt to protect code-compliant residential landlords from what legislators perceived to be overly zealous IPR requirements, the General Assembly has sought to impose limits on local government authority in this area. Its first significant attempt was Session Law 2011-281, which revised G.S. 153A-364 and G.S. 160A-424 (referred to as the IPR statutes) to constrain local government inspection and permitting programs pertaining to residential properties. *Community and Economic Development Bulletin* no. 8 (Nov. 2011) discusses the changes enacted at that time.

This bulletin supersedes no. 8 and describes the IPR statutes as revised effective January 1, 2017, following enactment of Session Law 2016-122 (the full text of which is presented in Appendix A). Notably, as with the 2011 law, the revisions taking effect in 2017 address only residential properties.[2] The 2017 revisions built on the 2011 law but made significant changes that will require inspection departments across the state to review and modify their procedures. This bulletin is designed to assist public officials in that endeavor. However, much like the 2011 enactment, the statutes that came into effect in early 2017 read more like a series of prohibitions with permitted exceptions rather than as a coherent statutory framework. Thus, a question-and-answer format is utilized to explain the key components of the revised statutes.

General Operation and Common Definitions

1. What do the IPR statutes regulate?

Local government inspection departments have long conducted periodic inspections of commercial and residential buildings pursuant to two statutes: G.S. 153A-364 (counties) and G.S. 160A-424 (cities), enacted in 1969. The General Assembly has since extensively revised those statutes twice: once in 2011 and, most recently, in 2016, effective in 2017.[3] The 2011 enactment added reasonable cause thresholds that must be reached prior to conducting periodic inspections of residential properties, and it limited local government authority to impose permits, registration requirements, and fees on residential rental properties. The most recent

1. The periodic inspections statutes were first enacted in 1969 and remained essentially unchanged until 2011. *See* S.L. 1969-1065 (cities) and S.L. 1969-1066 (counties).

2. The law effective in 2017, like the 2011 enactment, did not constrain local government authority over nonresidential properties, leaving governments with the same inspection, permitting, and registration authority over commercial buildings that they have possessed for decades. See Question 18 for discussion on the distinction between residential and nonresidential buildings under the IPR statutes.

3. A minor clarification enacted in 2014 addressed how periodic inspections by the North Carolina Housing Finance Agency are to be handled. S.L. 2014-103, § 13.

revision that took effect in 2017 could be fairly characterized as a clarification of the 2011 enactment. Taken together, as revised, the IPR statutes proscribe certain activities and therefore, by implication, set boundaries around local government authority to implement the following regulatory tools with respect to residential property:

- periodic inspection programs,
- residential rental property registration programs,
- residential rental property permit programs,
- fees on residential rental property.

The IPR law authorizes local governments to undertake the above regulatory activities only when certain threshold conditions are present. In evaluating whether or not the threshold conditions exist in order to permit the local government to use one of the IPR tools listed above, it is first necessary to determine the correct unit of analysis. For example, in some cases one must look at the conditions present in a single residential unit, such as a particular apartment. In other cases, one must examine the conditions present in an entire building or property and, sometimes, an entire geographic area. Tables 1 through 3 summarize, for each IPR regulatory tool, the threshold conditions that must exist and the unit of analysis for assessing those conditions. These regulatory activities are discussed in greater detail in the remainder of this bulletin, beginning with Questions 2 through 5, which define certain terms used throughout the IPR statutes.

2. What is a "periodic inspection"?

The IPR statutes empower a local government inspection department to conduct "periodic inspections" for "hazardous and unlawful conditions in buildings or structures within its territorial jurisdiction." The term *periodic* is not defined in the General Statutes, so its ordinary meaning must be used. A periodic inspection is therefore one that occurs at regular or scheduled intervals or from time to time without specific cause. The meaning is also illuminated by reviewing the legal context in which the authority to conduct periodic inspections was first enacted.

In 1967, in the landmark case *Camara v. Municipal Court of San Francisco*,[4] the U.S. Supreme Court granted Fourth Amendment protections to owners of residential properties by requiring housing inspectors to obtain administrative inspection warrants. That same year, parallel protections were granted to owners of commercial buildings.[5] The Court noted experts' consensus "that the only effective way to seek universal compliance with the minimum standards required by municipal codes is through *routine periodic inspections of all structures*."[6] Shortly after the Supreme Court required inspectors to obtain an owner's consent or a warrant prior to inspecting a building, North Carolina enacted its first periodic inspection laws,[7] providing authority for the issuance of administrative inspection warrants.[8]

4. 387 U.S. 523 (1967).

5. See v. City of Seattle, 387 U.S. 541, 541 (1967).

6. *Camara*, 387 U.S. at 535–36 (emphasis added).

7. *See supra* note 1.

8. Philip P. Green Jr., Legal Aspects of Building Code Enforcement in North Carolina 68 (2d. ed. 1987).

Table 1: Conduct Inspection or Place Residential Property into a Program of Periodic Inspections (G.S. 153A-364(a) and (b); G.S. 160A-424(a) and (b))

Threshold Conditions	Scope of Property Evaluated and Affected
Property has history of more than FOUR verified violations of *housing* ordinances or codes within "rolling" 12-month period	Property as a whole
Complaint or request for inspection	Entire building
Actual knowledge of unsafe condition	Entire building
Violations of *local* ordinances or codes are visible from outside the property	Property as a whole
Safety hazard in one unit of multifamily building that poses immediate threat to occupant	Other dwelling units in building "to determine if that same safety hazard exists"
Property located within targeted area designated as blighted	ANY PROPERTY within the designated geographic area not to exceed 1 sq. mile or 5% jurisdiction area, whichever is greater

Table 2: Require Landlord to Register or Obtain Permit Prior to Renting Residential Units (Rental Only) (G.S. 153A-364(c); G.S. 160A-424(c))

Threshold Conditions	Scope of Property Evaluated and Affected
More than FOUR verified violations of *housing* codes within "rolling" 12-month period	Individual rental *units* (not property as a whole)
TWO or more verified violations of *housing* codes in "rolling" 30-day period	Individual rental *units* (not property as a whole)
Property is in top 10% of properties with crime or disorder problems as locally defined	Property as a whole

Table 3: Levy a Special Fee or Tax on Residential Rental Property (G.S. 153A-364(c); G.S. 160A-424(c))

Threshold Conditions	Scope of Property Evaluated and Affected
When fee is also levied against other commercial and residential properties	ANY PROPERTY
Unit or property meets requirements for permitting described in Table 2	Unit or property as described in Table 2; fee may not exceed $500 in year of violation

G.S. 15-27.2 authorizes warrants for two types of inspections: (1) the inspection of property "to be searched or inspected as part of a legally authorized program of inspection which naturally includes that property" and (2) the inspection of property when "there is probable cause for believing that there is a condition, object, activity or circumstance which legally justifies such a search or inspection of that property."[9]

An example of the first type of inspection, an inspection conducted as part of a program of inspection, would be one conducted as part of a requirement that all buildings be subject to an annual inspection. Another example of a program of inspection—conducted with less precise regularity—would be a requirement that an inspection occur whenever a request is made for electricity to be restored to a building that has been disconnected for more than ninety days. The key is ensuring that the program of inspection is based on a "general administrative plan derived from neutral sources" that meets "reasonable standards."[10]

An example of the second type of inspection, an inspection conducted in response to a condition or circumstance at a particular property, would be an inspection conducted by an inspector upon observing a code violation from outside the property. Another example of this type would be an inspection conducted in response to a complaint.

Both types of periodic inspections—those conducted as part of a program of inspection and those conducted in response to a specific condition—have long been permitted under the IPR statutes.[11] See Questions 6 and 7 for a discussion of reasonable cause and administrative search warrants.

3. What is the difference between a rental unit, a building, and a property?

The IPR statutes do not define these terms, but some helpful definitions are found elsewhere in the landlord and tenant statutes pertaining to eviction. There the term *individual rental unit* is defined as "an apartment or individual dwelling or accommodation which is leased to a particular tenant, whether or not it is used or occupied or intended to be used or occupied by a single family or household."[12] Single-family structures would be expected to contain only one rental unit; multifamily structures may contain more than one.

The term *residential building* was first introduced to the IPR statutes in 2011. At that time, a definition for that term could be found in a statute dealing with the North Carolina Home Inspector Licensure Board, where it was defined as a "structure intended to be, or that is in fact, used as a residence by one or more individuals."[13] A single building may contain multiple rental units.

The IPR statutes refer to "property" as distinct from a unit or building. *Property* is undefined in the IPR statutes, but the comparable terms *entire premises or leased residential premises* are defined in the landlord and tenant statutes as "a house, building, mobile home, or apartment,

9. Section 15-27.2(c)(1) of the North Carolina General Statutes (hereinafter G.S.). *See also* Gooden v. Brooks, 39 N.C. App. 519, 524 (1979) (finding that a warrant for a periodic inspection is constitutional provided there is a showing that the general administrative plan for enforcement is based upon "reasonable legislative or administrative standards").

10. *Gooden*, 39 N.C. App. at 525.

11. *See* Green, *supra* note 8, at 66–70.

12. G.S. 42-59.

13. G.S. 143-151.45. Sections 3.3 and 3.8 of S.L. 2009-509 repealed G.S. 143-151.45 effective October 1, 2013, meaning the statute was in effect when the term "residential building" was first introduced to the IPR statutes in 2011.

whether publicly or privately owned, which is leased for residential purposes."[14] An entire premises specifically includes "the entire building or complex of buildings or mobile home park and all real property of any nature appurtenant thereto and used in connection therewith, including all individual rental units, streets, sidewalks, and common areas."[15] Accordingly, a reasonable definition of *property*, as that term is used in the IPR statutes, would include the entire building and appurtenant real property in which a single rental unit is located, and it arguably would also include all buildings that are part of a complex of buildings under unified ownership or management.

4. What is the difference between an owner and a landlord, and how are those terms defined for purposes of the IPR statutes?

The IPR statutes do not further define *owner* and *landlord*, but these terms are defined elsewhere in the General Statutes. The term *owner* appears multiple times in the Article of the General Statutes in which the IPR statutes are located but is formally defined in only one place: the minimum housing statutes. The definition there is "the holder of the title in fee simple and every mortgagee of record."[16] A "mortgagee of record" is typically a bank that has loaned money to the owner and retains the power to sell the property (usually pursuant to a deed of trust) in order to pay off the loan in the event of default by the owner. The mortgagee is considered an owner because it retains this power of sale, which amounts to a substantial right of property ownership. Elsewhere in the same article, in a section on vested rights, *landowner* is defined as "any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of such owner."[17] A local government could reasonably combine these definitions to define *owner* as the holder of title to a property, including the heirs, devisees, successors, and assigns of such an owner, and any mortgagee of record.

Landlord is defined in a chapter of the General Statutes devoted to landlord and tenant law as "any owner and any rental management company, rental agency, or any other person having the actual or apparent authority of an agent to perform the duties imposed by this [section of the General Statutes pertaining to landlord and tenant law]."[18] Notably, the IPR statutes themselves use the terms "landlord" and "manager of rental property" interchangeably.[19] In interpreting the IPR statutes, it is therefore reasonable for a local government to define landlord to include owners as well as rental management companies and agencies.

The IPR statutes use the term "landlord" frequently but also refer to "owner or manager" with the same intended meaning as "landlord." Thus, the term *landlord* is used throughout this bulletin to mean either an owner or a manager of rental property.

14. G.S. 42-59.
15. *Id.*
16. G.S. 160A-442.
17. G.S. 160A-385.1(b).
18. G.S. 42-40.
19. *Compare* G.S. 153A-364(c) and G.S. 160A-424(c) (referring to "owner or manager") *with* G.S. 153A-364(e) and 160A-424(e) (referring to "landlord").

5. What is a "verified violation"?

The term *verified violation* is carefully defined in the most recent enactment of the IPR statutes and must be distinguished from a mere violation or occurrence. A single "verified violation" is the aggregate of all violations of *housing* ordinances or codes found in an individual residential rental unit during a 72-hour period that have not been corrected by the owner or manager within 21 days of receipt of written notice from the local government.[20] The 21-day grace period may be withdrawn by the local government if the same violation occurs more than two times in a 12-month period. Note that the violation need only have *occurred* more than two times in a 12-month period; there is no requirement for those three or more occurrences of a violation to be classified as a "verified violation" in order for a local government to withdraw the 21-day grace period. Any violation that results from tenant behavior (such as failure by a tenant to properly dispose of garbage or rubbish) shall be deemed corrected if the owner or manager brings a summary ejectment action against the tenant within 30 days of receipt of notice of the violation.

The procedural requirements for establishing a verified violation are numerous and complex. Table 4 takes the statutory language and breaks it down into the necessary steps for determining a verified violation.

The standards to be applied by an inspector in determining whether a violation has occurred is determined by the local ordinances currently in effect. For example, an inspector could, in a single inspection of residential property, identify violations of aesthetic maintenance standards imposed pursuant to the jurisdiction's general ordinance-making power and also identify violations of minimum housing standards imposed pursuant to a jurisdiction's minimum housing code.[21] Other standards could be imposed by building codes, nuisance regulations, and the statutory requirements for providing fit premises to tenants under G.S. 42-42. This bulletin does not address the construction or maintenance standards to which buildings are held but, rather, the procedural requirements for conducting inspections, permitting, and registration.

Periodic Inspection Programs

Reasonable Cause

6. When are local governments authorized to conduct periodic inspections?

Prior to the 2011 modifications to the IPR statutes, a local government could establish almost any parameters for a program of periodic inspections of buildings. Inspections could be

20. G.S. 153A-364(c)(1)–(2); G.S. 160A-424(c)(1)–(2).

21. The distinction between aesthetic maintenance standards and minimum housing standards is important and requires inspectors to be aware of how enforcement procedures differ for each standard. *See* C. Tyler Mulligan & Jennifer L. Ma, Housing Codes for Repair and Maintenance: Using the General Police Power and Minimum Housing Statutes to Prevent Dwelling Deterioration 32–33 (2011) (addressing aesthetic maintenance standards in chapter 2 and minimum housing standards in chapter 3 and describing how to pursue the simultaneous enforcement of both in chapter 4); *see also* Tarik Abdelazim, C. Tyler Mulligan, & Christopher B. McLaughlin, Implementing a Coordinated Approach to Address the Systemic Causes of Vacancy and Abandonment in High Point, North Carolina 18–24 (Center for Community Progress, 2016), www.communityprogress.net/filebin/161102_HighPoint_TASP_Report_FINAL.pdf (addressing various sources of statutory authority for code enforcement in the City of High Point in Section 3 of the report).

Table 4: Steps for Determining Verified Violations for an Individual Residential Rental Unit

1. Inspect unit and identify all violations of housing codes.	*Explanation:* Conduct a lawful inspection of a residential rental unit and identify all violations of housing ordinances or codes. Note the start time of the inspection as the beginning of the 72-hour inspection and violation identification period.
2. Determine, for each violation, whether it has occurred at this unit more than two times in *any* 12-month period in unit's history. If so, decide whether to classify it as a verified violation.	*Explanation:* At the end of the 72-hour inspection period, or sooner if the inspection has concluded, examine all violations identified for a single unit. For each identified violation, determine whether that violation has ever occurred at that unit more than two times in any 12-month period. A record of the occurrences is all that is required; these occurrences do not need to have been classified as "verified violations" during the 12-month period. The continuous 12-month period may be set at any point in the past and may include the current inspection period but is not required to include it. If, during any 12-month period in the history of that unit, the same violation has "occurred" more than two times, the local government may withdraw the 21-day grace period usually allowed for correcting the violation and instead immediately classify the repeated violation as a verified violation.
3. Repeat Step 2 for each violation identified during the 72-hour inspection period. Notify the owner of all such verified violations.	*Explanation:* Repeat Step 2 for every violation identified during the 72-hour inspection period. Multiple verified violations may be identified through this process. Inform the owner or manager of each verified violation so identified.
4. Aggregate all remaining violations into a single notice of violation and serve the aggregated list on the owner.	*Explanation:* All remaining violations not already classified as a verified violation in Steps 2 and 3 should be aggregated into a single notice of violation. Provide written notice to the owner or manager of those violations using any reasonable and verifiable method of service, including service by registered or certified mail. The IPR statutes do not mandate any particular form of notice—only the date of the owner's receipt of notice needs to be verified. It is recommended that officials simply follow the notice or service requirements required by the housing code applied by the inspector. For example, if the inspector applied standards from the minimum housing code, use the service of complaint process prescribed for minimum housing code violations in G.S. 160A-445.
5. Note the date on which the owner receives notice as the start of 21-day grace period under IPR statutes.	*Explanation:* Note the date on which the owner received notice of the aggregated list of violations. The 21-day grace period allowed by the IPR statutes for correction of those violations begins on that date.
6. Issue housing code orders and follow process for effectuation of those orders separately without regard for the 21-day grace period in the IPR statutes.	*Explanation:* Follow the appropriate order and effectuation process set forth for the housing code applied by the inspector, without regard to the IPR statutes. For example, if violations of the minimum housing code were identified, then issue orders for repair or demolition and effectuation of those orders as delineated in G.S. 160A-443 of the minimum housing statutes. Time frames for repair or demolition and effectuation of minimum housing violations should be determined separately and without regard to the IPR statutes' 21-day grace period. For example, if a public officer relies on the minimum housing code to issue an order for a broken septic system to be repaired within 10 business days and an order for a broken window to be repaired within 30 days, the minimum housing code process should be followed for both orders. The 21-day grace period for verified violations in the IPR statutes pertains only to inspections, permitting, and registration and has no bearing on the statutory procedure for issuing and effectuating minimum housing orders.
7. Assess whether all violations were corrected within 21 days; if not, an aggregated list of uncorrected violations becomes a single verified violation.	*Explanation:* At the conclusion of the 21-day grace period allowed by the IPR statutes, review the aggregated list of violations identified in Step 4. If all violations listed in the written notice were corrected "within 21 days of receipt of written notice," no verified violation has occurred for purposes of the IPR statutes. If, however, one or more violations listed in the notice were not corrected "within 21 days," the uncorrected violations are aggregated and classified as a single verified violation. Note, however, that even if a violation is corrected and not included as a verified violation, it is still an occurrence of a violation for purposes of Step 2.
8. If the owner brings action to evict a tenant within 30 days of receipt of notice, all tenant-related violations are deemed corrected.	*Explanation:* Within 30 days of the owner's receipt of written notice of violations, any violations related to tenant behavior that constitute a violation by the owner or manager (such as violation of a noise ordinance) are deemed corrected if the owner or manager brings a summary ejectment action to have the tenant evicted. Any tenant-related violations corrected in this manner must be removed from the aggregated list of uncorrected violations prepared in Step 7. Even if corrected, each separate violation is still an occurrence of a violation for purposes of Step 2.

required annually or on some other interval—whatever the inspections department deemed necessary. That flexibility remains in place for nonresidential buildings, but under the IPR statutes, residential buildings or structures may be inspected only when there is reasonable cause for the inspection. "Reasonable cause" is defined to mean any of the following:

- The property has a history of more than four verified violations of the housing ordinances or codes within a rolling 12-month period.[22]
- There has been a complaint that substandard conditions exist within the building or there has been a request that the building be inspected.
- The inspection department has actual knowledge of an unsafe condition within the building.
- Violations of the local ordinances or codes are visible from the outside of the property.[23]

Therefore, a local government is not authorized to conduct a periodic inspection of a residential building unless one or more of the conditions listed above are present to establish reasonable cause. However, two exceptions to the reasonable cause requirement are provided.

The first exception is that inspectors are authorized to engage in "a targeted effort to respond to blighted or potentially blighted conditions within a geographic area that has been designated" by the governing board.[24] In such an area, a local government may require periodic inspections without first establishing reasonable cause. This exception for "targeted efforts" is discussed below in Questions 19 through 21.

The second exception occurs when a safety hazard exists in a dwelling unit within a multifamily building that, in the inspector's opinion, "poses an immediate threat to the occupant." The inspection department may inspect additional dwelling units in the multifamily building to determine if the same safety hazard is present in those units as well.[25]

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22. G.S. 153A-364(a) (counties); G.S. 160A-424(a) (cities).

23. G.S. 153A-364(a) (counties); G.S. 160A-424(a) (cities).

24. G.S. 153A-364(b) (counties); G.S. 160A-424(b) (cities).

25. G.S. 153A-364(a) (counties); G.S. 160A-424(a) (cities). The clause pertaining to this exception, which reads, "However, when the inspection department determines that a safety hazard exists in one of the dwelling units within a multifamily building, which in the opinion of the inspector poses an immediate threat to the occupant, the inspection department may inspect, in the absence of a specific complaint and actual knowledge of the unsafe condition, additional dwelling units in the multifamily building to determine if that same safety hazard exists," appears to have been inadvertently inserted too early in the paragraph. As currently written, it is located in subsection (a) just *prior to* the sentence that reads, "Except as provided in subsection (b) of this section, the inspection department may make periodic inspections only when there is reasonable cause to believe that unsafe, unsanitary, or otherwise hazardous or unlawful conditions may exist in a residential building or structure." The clause seems out of context in its current location, but it seems to fit better when read as *following* the sentence it currently precedes. The meaning of the clause remains sufficiently clear despite its awkward location. A court would inevitably look past any such error. *See* Fortune v. Buncombe Cty. Comm'rs, 140 N.C. 322 (1905) ("The use of inapt, inaccurate, or improper terms or phrases will not invalidate the statute, provided the real meaning of the Legislature can be gathered from the context or from the general purpose and tenor of the enactment. Clerical errors or misprisions, which, if not corrected, would render the statute unmeaning or incapable of reasonable construction or would defeat or impair its intended operation, will not necessarily vitiate the act, for they will be corrected, if practicable.").

7. Once reasonable cause is established under the IPR statutes, is the inspection department empowered to conduct an immediate inspection without further process?

No. All inspections must be conducted in compliance with the requirements of the Fourth Amendment of the United States Constitution, which protects citizens against unreasonable searches.[26] Prior to inspecting a dwelling, the inspector must first obtain the consent of the occupant[27] or an administrative inspection warrant,[28] unless there are exigent circumstances.

To request an administrative inspection warrant for a periodic inspection, an inspector submits an affidavit form provided by the North Carolina Administrative Office of the Courts. Each type of inspection has its own affidavit form, so an inspector should submit the form that corresponds to the type of inspection to be conducted. These forms are presented in Appendices B and C to this bulletin.

8. Reasonable cause is established when a property has a "history" of more than four verified violations within a "rolling" 12-month period. If five violations are classified as "verified violations" as a result of an inspection of a single rental unit in a property, has a "history" of more than four verified violations been established for the property?

Yes. Five "verified violations" identified for a single rental unit through the process outlined in Table 4 establishes a "history" of more than four verified violations in a rolling[29] 12-month period for an entire property. The statute does not require that verified violations be identified at different times or be identified in multiple units—all of the verified violations can result from violations occurring at a single rental unit on a property. Five verified violations on a property could result also from combining the verified violations identified at multiple units on the property. Once the threshold of five verified violations for a property has been reached, the inspection department has reasonable cause to inspect all units on the property and place the entire property in a program of inspections. This illustrates the importance of paying attention to the unit of analysis for each type of reasonable cause, as in this case, there is a meaningful distinction between an individual rental unit and the property as a whole. The appropriate unit of analysis for each type of reasonable cause is listed in Table 1. See Question 3 for an explanation of the difference between a rental unit, a building, and a property.

9. In listing the types of violations that establish reasonable cause, the IPR statutes distinguish between violations of "housing ordinances or codes" and violations of "local ordinances or codes." What is the difference?

Reasonable cause is satisfied when a landlord has a history of more than four verified violations of the "*housing* ordinances or codes" within a rolling 12-month period or when violations of the "*local* ordinances or codes" are visible from outside the property. Under long-standing rules

26. *See supra* notes 4–5 and accompanying text.

27. *In re* Dwelling Located at 728 Belmont Ave., Charlotte, 24 N.C. App. 17, 23 (1974) ("We hold that the consent of the tenant who was in actual possession and control of the premises was sufficient to authorize an inspection by the Housing Inspector.")

28. *See* Gooden v. Brooks, 39 N.C. App. 519 (1979); *see also* David W. Owens, Land Use Law in North Carolina 235–36 (2d ed. 2011); Robert L. Farb, Arrest, Search, and Investigation in North Carolina 448–52 (5th ed. 2016). The forms for obtaining administrative search warrants are presented in Appendixes B and C to this bulletin. For statutory guidance on administrative search warrants in North Carolina, see G.S. 15-27.2.

29. *See supra* note 22 for a definition of "rolling" as used in this context.

of statutory interpretation, this distinction must be given meaning.[30] A reasonable interpretation of "housing ordinances or codes" would include all regulations pertaining to housing: state building codes pertaining to residential buildings, aesthetic design standards for residential buildings, nuisance and general police power regulations applicable only to residential buildings, and regulations requiring that dwellings be kept in a state of good repair.[31] This interpretation is in contrast to "local ordinances or codes," a clause which arguably includes any ordinance or code of the local jurisdiction whether related to housing or not. Accordingly, if a violation of any local ordinance or code can be observed from outside the property, reasonable cause has been reached and periodic inspections may be undertaken on the property.

10. Reasonable cause is established when "there has been a request that the building be inspected." Can anyone make that request?

Apparently, yes. The statute places no conditions on the identity or motive of the requestor. It appears, therefore, that competitor landlords, tenant rights groups, legal aid organizations, and disgruntled tenants (among others) can all request an inspection of a building, and such a request establishes reasonable cause under the statute.

11. Can the request for inspection come from a department of the city or county other than the inspection department?

Yes. As mentioned above, the statute places no conditions on the identity[32] or motive of the requestor. Therefore, a social worker in the social services department could request that a building be inspected. However, local governments should develop reasonable procedures for making such interdepartmental requests to ensure that the basis for any request is genuine.

12. Can a local government require a landlord to submit to an inspection prior to receiving utility service from a utility operated by that government?

No, but some explanation is required to address some nuance in the IPR statutes. The prohibition that appears in both G.S. 153A-364(c)(v) (counties) and G.S. 160A-424(c)(v) (cities) reads as follows: "In no event may a [city or county] do any of the following: . . . (v) require any owner or manager of rental property to submit to an inspection before receiving any utility service provided by the city." The key phrase is "any utility service provided by *the city*," which is the exact language that appears in both the county version of the statute and the city version of the statute.

For a city, this means that the city cannot require an inspection as a condition of receiving utility service from a utility that "the city" operates. The purpose is clear. The IPR statutes were designed to prevent local governments from making periodic inspections in the absence of

30. TRW Inc. v. Andrews, 534 U.S. 19, 31 (2001) ("It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant. . . . We are reluctant to treat statutory terms as surplusage in any setting."); Montclair Twp. v. Ramsdell, 107 U.S. 147, 152 (1883) (courts should "give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed").

31. Regulations requiring owners to maintain dwellings in good repair are discussed in Mulligan & Ma, *supra* note 21, at 32–33.

32. A utility owned by the local government may be an exception to this rule. See Question 12.

reasonable cause, and this clause prohibits a city from making an end-run around the reasonable cause protections by imposing an inspection requirement through its utility services.

A city might ask whether it could require a landlord to submit to an inspection any time the landlord requested service from a *county* utility. This is not possible. A city may only conduct periodic inspections when "reasonable cause," as defined by G.S. 160A-424(a), is established. Reasonable cause, as so defined, is not established by a mere request for service from a utility.[33]

The county statute uses identical language: a *county* cannot require a landlord to submit to an inspection as a condition of "receiving any utility service provided by *the city*" (emphasis added). The meaning is clear enough, but the precise language appears to miss the intent of the statute, which is to prevent a county from making an end-run around the reasonable cause requirements by imposing an inspection requirement through its utility services. Even if one assumes that the General Assembly intended to use the precise words as written (preventing a county from requiring an inspection when city utility service is requested), it makes little sense in operation. Suppose a county were to attempt to require an inspection each time an owner requested service from a city utility. An inspection on that basis would not meet any of the reasonable cause requirements listed in G.S. 153A-364(a), so the county could not conduct the inspection anyway.[34] Furthermore, counties often contain multiple cities, so the meaning of the singular reference to "the city" is inapt. The reference to "city," a word which appears nowhere else in the county IPR statute, is likely a drafting error. The intended word was probably "county," resulting in "any utility service provided by the county." It is within the power of a court to look past drafting errors,[35] so counties are advised not to require a landlord to submit to an inspection as a condition of receiving county utility service—even though imposing that condition is not explicitly prohibited by statute.

13. Provided that reasonable cause is satisfied, the IPR statutes empower "the inspection department" to conduct periodic inspections. How is an "inspection department" defined?

Members of inspection departments are described in G.S. 153A-351 (counties) and G.S. 160A-411 (cities) and may be given such titles as building inspector, electrical inspector, plumbing inspector, housing inspector, zoning inspector, or any other title that is descriptive of the inspector's assigned duties. Certain members must be qualified pursuant to G.S. 153A-351.1 (counties) and G.S. 160A-411.1 (cities). The duties and responsibilities of an inspection department are described in G.S. 153A-352 (counties) and G.S. 160A-412 (cities).

33. Note, however, that a county utility or private utility could, upon receiving a request for service from a landlord, contact the city and request that the city inspect the building. See Questions 10 and 11.

34. A private utility could, upon receiving a request for service from a landlord, contact the county and request that the county inspect the building. See Questions 10 and 11. A city utility, however, might be prevented from making a similar request of the county because such a request by the city utility would arguably amount to requiring the owner "to submit to an inspection before receiving any utility service provided by the city."

35. *See supra* note 25.

14. Minimum housing public officers are not specifically assigned to inspection departments. Can a local government get around the IPR statutes' reasonable cause requirements by conducting inspections pursuant to authority granted under minimum housing statutes?

Minimum housing public officers are not statutorily assigned to city or county inspection departments; they operate under a grant of authority[36] that is separate and distinct from inspection departments. The reasonable cause requirements of the IPR statutes are directed specifically at inspection departments, and minimum housing officers are not mentioned. It has therefore been argued that minimum housing inspections, conducted by minimum housing public officers and authorized under separate statutes, are not subject to the reasonable cause requirements of the IPR statutes. A court, however, is unlikely to agree with that argument.[37]

As a threshold matter, it is doubtful that the minimum housing statutes grant independent inspection powers to minimum housing officers. While the minimum housing statutes do contain language pertaining to investigations and examinations,[38] the references are general in nature and do not provide explicit authority for minimum housing officers to conduct inspections in the absence of reasonable cause or outside the strict procedures set forth in G.S. 160A-443(2). A more plausible interpretation of the minimum housing statutes is that minimum housing officers are permitted to utilize the inspection powers granted to inspectors in inspection departments. Indeed, a local government may assign its minimum housing public officer to its inspection department under G.S. 153A-351 (counties) and G.S. 160A-411 (cities). In North Carolina, particularly in smaller jurisdictions, a minimum housing public officer often also carries the title of housing inspector.

Even if minimum housing statutes are viewed as providing independent authority for periodic inspections without reasonable cause, such an interpretation would directly conflict with the IPR statutes. When two statutes deal with the same subject—in this case, authority to inspect residential dwellings for code compliance—rules of statutory interpretation dictate that the statutes should be "read together and harmonized."[39] Reading the minimum housing statutes in such a way that allows minimum housing officers to disregard the IPR statutes' reasonable cause requirements would be repugnant to the IPR statutes and calls that reading into question. In addition, the IPR statutes contain an explicit reference to minimum housing codes in the context of targeted periodic inspections in subsection (b) of G.S. 153A-364 (counties) and

36. Part 6 of Article 19 of G.S. Chapter 160A.

37. For a fuller discussion of this issue, see Tyler Mulligan, *Minimum Housing: A Way Around Residential Inspection Limits?* Community and Economic Development in North Carolina and Beyond (UNC School of Government, Sept. 20, 2011), http://sogweb.sog.unc.edu/blogs/ced/?p=3383.

38. *See* G.S. 160A-448 (authorizing public officers to investigate dwelling conditions within the jurisdiction and to enter premises for the purposes of making examinations) *and* G.S. 160A-449 (authorizing local governments to make appropriations to fund the administration of a minimum housing program to include "periodic examinations and investigations" of dwellings).

39. "Where there is one statute dealing with a subject in general and comprehensive terms, and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but, to the extent of any necessary repugnancy between them, the special statute, or the one dealing with the common subject matter in a minute way, will prevail over the general statute, according to the authorities on the question, unless it appears that the legislature intended to make the general act controlling; and this is true a fortiori when the special act is later in point of time, although the rule is applicable without regard to the respective dates of passage." Nat'l Food Stores v. N.C. Bd. of Alcoholic Control, 268 N.C. 624, 628–29 (1966).

G.S. 160A-424 (cities), thereby suggesting that the General Assembly intended for minimum housing inspections to be subject to the IPR statutes. It is therefore difficult to conclude that minimum housing public officers are exempt from the reasonable cause requirements set forth in the IPR statutes. However, no court has clarified the law on this point.

Program of Inspections

15. There are several different ways reasonable cause can be established. One way is receipt of a complaint that substandard conditions exist within a building. Once a complaint is received, is the government authorized to conduct only a single inspection to verify the complaint, or can the local government subject the building to several periodic inspections (or a program of inspections)?

Once reasonable cause is established for a particular building, a local government can require the building to undergo a single inspection or an entire sequence of periodic inspections, essentially placing that building into a periodic inspection program for some length of time. The statute does not specify for how long a local government may conduct periodic inspections in a building once reasonable cause is established. Therefore, the local government can establish a reasonable length of time as a matter of policy. For example, suppose that a local government receives a complaint about a building, thereby establishing reasonable cause to conduct periodic inspections of the building. The local government could elect to conduct only one inspection of the building, or it could require the building to undergo periodic inspections over some period of time, such as semi-annual inspections conducted over the following two years. The time period should be reasonable and rationally related to the government's purpose for the inspections. For consistency, it is advisable for the local government to develop a written policy establishing how it will respond to each type of reasonable cause listed in Table 1.

16. When a local government establishes how many periodic inspections (in a program of inspections) will be required for each type of reasonable cause, can it call for a different response depending on whether it is inspecting single-family or multifamily buildings?

No. The statute specifically prohibits a local government from discriminating between single-family and multifamily buildings in conducting periodic inspections. A local government may apply different standards during an inspection (for example, different plumbing requirements for multifamily dwellings consistent with state building laws), but as regards holding or scheduling a program of inspections, it may not discriminate between single-family and multifamily buildings.

17. In a program of inspections, can a local government establish a different sequence or frequency of periodic inspections depending on whether the residential building being inspected is owner-occupied or tenant-occupied?

The answer under the most recent IPR enactment is no.[40] Under earlier versions of the statutes, a local government could determine that more frequent or less frequent periodic inspections are required for owner-occupied properties as compared to tenant-occupied properties. Having

40. An early draft of S.L. 2011-281 prohibited inspection departments from discriminating "between owner-occupied and tenant-occupied buildings or structures," but that language was removed prior to enactment. The language was restored in S.L. 2016-122.

made such a determination, a local government could therefore establish different inspection programs for owner-occupied and tenant-occupied dwellings in terms of the number of inspections or the number of years over which the dwelling is subject to those inspections. Any local governments that enacted such policies under earlier versions of the statute must now revise them to eliminate differences based on tenancy or manner of ownership.

18. The IPR statutes were designed to limit inspections of* residential *rental properties. Are periodic inspections of* nonresidential *buildings similarly restricted?

As already noted, local government inspection departments have long been authorized under G.S. 160A-424 and G.S. 153A-364 to conduct periodic inspections of all structures, residential and nonresidential. In addition, inspection departments were authorized to conduct other "necessary" (or ad hoc) inspections when unsafe conditions were suspected to exist in a particular building. The IPR statutes, as revised by recent enactments, now distinguish between residential and nonresidential buildings for inspection purposes. That is, recent enactments have imposed new requirements which apply solely to residential buildings; namely, inspections of residential buildings are permitted only when "reasonable cause" is established as explained in Question 6. These special statutory protections for residential buildings were not similarly applied to nonresidential structures, so local governments may therefore continue to inspect nonresidential structures as they have since the IPR statutes were originally enacted in 1969.

Inspections as Part of a Targeted Effort within a Geographic Area

19. The law offers an exception to the reasonable cause requirements for "targeted efforts to respond to blighted or potentially blighted conditions within a geographic area that has been designated" by the governing board. How does a governing board designate a geographic area for a "targeted effort?"

A governing board must comply with several requirements in order to designate a geographic area for a targeted effort to respond to blighted or potentially blighted conditions. First, the governing board must select a targeted area that "shall reflect" its "stated revitalization strategy." Presumably, this means that the local government must have issued a "revitalization strategy" pertinent to the targeted area or to some larger area that includes the targeted area. No further guidance about the level of detail or scope of the revitalization strategy is provided in the IPR statutes, so presumably the strategy's content is left to the discretion of the governing board. If the jurisdiction has already approved an urban redevelopment plan pursuant to the Urban Redevelopment Law,[41] or a Revitalization Strategy Area under the Community Development Block Grant (CDBG) Program,[42] these would meet (and almost certainly exceed) the requirement.

41. Article 22 of G.S. Chapter 160A. The process for adoption of a plan is provided at G.S. 160A-513. *See also* Tyler Mulligan, *Using a Redevelopment Area to Attract Private Investment,* Community and Economic Development in North Carolina and Beyond (UNC School of Government, Nov. 20, 2012), http://ced.sog.unc.edu/using-a-redevelopment-area-to-attract-private-investment/.

42. *See, e.g.*, U.S. Department of Housing and Urban Development, CDBG Neighborhood Revitalization Strategies (Notice CPD-96-01, Jan. 16, 1996), www.hudexchange.info/resources/documents/Notice-CPD-96-01-CDBG-Neighborhood-Revitalization-Strategies.pdf; U.S. Department of Housing and Urban Development, CDBG Community Revitalization Strategies in the State CDBG Program (Notice CPD-97-1, Feb. 4, 1997), www.hud.gov/offices/adm/hudclips/notices/cpd/97-1CPDN.doc.

Second, the targeted area "shall consist of property that meets the definition of a 'blighted area' or 'blighted parcel' as those terms are defined in G.S. 160A-503(2)[43] and G.S. 160A-503(2a)[44] [of the Urban Redevelopment Law], respectively." Under the Urban Redevelopment Law, a local planning commission must formally designate each blighted area or parcel, but for purposes of the IPR statutes, that step is not required. Targeted areas can be identified as blighted by the governing board alone—the Urban Redevelopment Law process is not required for IPR purposes.

Third, the jurisdiction must hold a hearing about the targeted inspections plan and provide notice of the hearing to all owners and residents of properties in the targeted area.

Fourth, the jurisdiction must establish a plan to address the ability of low-income residential property owners to comply with minimum housing code standards, presumably only within the targeted area. This final component is discussed in Question 21.

20. Can a local government simply designate most or all of its geographic area as a "targeted area"?

No. Two restrictions in the IPR statutes ensure that a targeted area will be limited in scope. First, the aggregate of all targeted areas in a jurisdiction "shall not be greater than one square mile or five percent (5%) of the area" within the jurisdiction, "whichever is greater."[45] Second, a targeted area must reflect the jurisdiction's stated revitalization strategy and shall consist of property that meets the definition of a blighted area or blighted parcel, as explained in the previous question.

21. Once a geographic area is targeted, a plan must be developed to address the ability of low-income owners to comply with minimum housing code standards. What are the requirements for such a plan?

The statute offers no guidance on how to develop this plan. As a practical matter, a plan developed in consultation with low-income owners and organizations in targeted neighborhoods would presumably meet the statutory requirements and would probably minimize the risk of a legal challenge. Many local governments already have programs in place designed to assist low-income owners, such as low or zero interest rate rehabilitation loans with longer-than-average term lengths and amortization to enhance affordability, so these local governments could simply increase the availability of these products in targeted areas.[46]

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43. G.S. 160A-503(2) defines a blighted area as "an area in which there is a predominance of buildings or improvements (or which is predominantly residential in character), and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, unsanitary or unsafe conditions, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs the sound growth of the community, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare. . . . "

44. G.S. 160A-503(2a) defines a blighted parcel using the exact same characteristics as a blighted area, except the definition is applied at the parcel level.

45. G.S. 153A-364(b) (counties); G.S. 160A-424(b) (cities).

46. The primary source of statutory authority for offering loans or other financial assistance to low-income owners for rehabilitation of private dwellings is provided in G.S. 153A-376 (counties) and G.S. 160A-456 (cities). For a discussion of these statutes, see Tyler Mulligan, *Local Government Support for Privately Constructed Affordable Housing*, Community and Economic Development in North Carolina and Beyond (UNC School of Government, June 21, 2016), http://ced.sog.unc.edu/local-government-support-for-privately-constructed-affordable-housing/.

Permit and Registration Programs for Residential Rental Property

22. What is the difference between requiring a permit and establishing a registration program?

A permit program (sometimes called a certificate program) requires an owner or property manager to obtain a permit or other form of permission from the local government prior to renting or leasing units. In other words, an owner is prohibited from renting or leasing units until a permit has been obtained. The IPR statutes authorize local governments to require permits only for properties with a history of problems.

Registration programs do not require owners or managers to obtain a permit or permission to rent units, only that the units be registered with the local government.[47] Registration typically involves providing information about the owner's rental units (such as address, owner's name, and property manager's 24-hour contact information). "Residential rental property registration" programs were explicitly authorized in the 2011 IPR enactment, and a specific fee schedule was provided.

The purpose and function of a residential rental permit program remains distinct from that of a registration program, but now the IPR statutes impose a single regulatory framework that applies to both. Table 2 summarizes the conditions under which a local government can impose a permit or registration requirement on residential rental property, and Table 3 addresses fees associated with such programs.

23. When may a local government require an owner to obtain a permit or register prior to renting residential property?

The IPR statutes authorize local governments to impose a permit or registration requirement on residential rental properties in three situations that are illustrated in Table 2. The first two situations involve counting the number of verified violations within a certain period of time. That is, an individual rental unit can be placed under a permit or registration requirement when the unit has a history of more than four verified violations[48] in a rolling[49] 12-month period or two or more verified violations in a rolling 30-day period.

Note that any permit or registration program may be applied only to an individual rental unit that has reached the appropriate verified violation threshold. Other units located on the same property cannot be placed into a permit or registration program unless they separately have reached one of the verified violation thresholds listed in Table 2.[50]

The third situation listed in Table 2 occurs when a property is identified as being within the top 10% of properties with crime or disorder problems. In such cases, a local government may

47. Authority to enact a registration program is derived either from a local government's general police power or from its authority to regulate and license businesses. G.S. 160A-194 (cities); G.S. 153A-134 (counties).

48. See Question 5 and Table 4 for the statutory process for identifying verified violations.

49. *See supra* note 22 for a definition of "rolling" as used in this context.

50. Note that every verified violation against a single unit counts toward the total number of verified violations occurring on the property. Once the property as a whole reaches the five verified violation threshold, the entire property (and all units on that property) can be placed into a program of periodic inspections. See Table 1 and Question 8 for further explanation of a local government's authority regarding programs of inspection when a property has a history of more than four verified violations within a rolling 12-month period.

place the entire property[51]—and therefore all units on that property—into a permit or registration program. This third situation is explained in Question 24.

24. Does the law provide any guidance regarding how local governments should determine which properties are in the top 10% of properties with crime or disorder problems?

The top 10% of properties with crime or disorder problems is a subset of all properties that have experienced at least one crime or disorder problem during the relevant period (usually annual[52]). The process for determining the top 10% is left to the discretion of the local government, but the process should be set forth in a local ordinance and the program must adhere to IPR statutory requirements described below.

By way of background, the statute's reference to crime or disorder problems was originally included in the 2011 enactment in order to allow a crime or disorder program to continue that was already in place before 2011. That program counted and compared the number of reported violent crimes, property crimes, and other disorder-related requests for police assistance at residential rental properties in the city. Owners of properties with high counts were required to register those properties and were given the opportunity to cooperate with the police in the development of a plan to address the crime and disorder problems. After the 2011 enactment, other cities experimented with different models. One city created a policy that assigned points to each criminal or disorder offense: homicide was assigned 4 points, robbery 3 points, simple physical assault 2 points, and so on. Different offenses could therefore be weighted differently. This point system was used to determine which properties were in the top 10% of properties with crime or disorder problems.

The examples described above are instructive, but it is important to note that there is no model program. The IPR statutes impose no requirements for assessing and comparing the crime and disorder problems of residential rental properties. A local government is therefore free to establish its own program for determining the top 10% of properties with crime or disorder problems, provided it adheres to the following procedural requirements:

1. For properties that fall within the top 10%, the landlord must be notified of any crimes, disorders, or other violations that will be counted against the property.
2. The landlord must be given an opportunity to attempt to correct the problems.
3. Law enforcement personnel from the jurisdiction must assist the landlord in addressing any criminal activity, which may include testifying in court in a summary ejectment action or other matter to aid in evicting a tenant who has been charged with a crime.
4. If the jurisdiction's law enforcement department "does not cooperate in evicting a tenant," presumably by failing to provide written or verbal testimony in eviction proceedings, the tenant's behavior or activity at issue "shall not be counted as a crime or disorder problem as set forth in the local ordinance."

51. See Question 3 for an explanation of the difference between an individual unit and a property.

52. The IPR statutes authorize a local government to assess a fee against "top 10%" crime or disorder properties on an annual basis, so from a practical point of view, it may be easier to make the "top 10%" determination on the same time interval (i.e., annually). Fees for properties so identified are discussed in Questions 27 and 28.

25. Once a rental unit or property meets the threshold for imposing a permit or registration requirement, for how long can that requirement be imposed?

The statute does not specify. Once a property or rental unit meets the threshold for being placed into a permit or registration program, the local government can keep it in the program for whatever length of time it deems appropriate as established in its permit or registration policy. However, the time period established by the local government should be reasonable and rationally related to the purpose of the permit or registration program.

26. Can a local government levy a fee on properties that are placed into an inspection, registration, or permit program?

Yes, fees are authorized under the IPR law in limited circumstances, as shown in Table 3. As background, North Carolina case law permits local governments to impose fees to defray the costs of administering programs undertaken pursuant to express statutory authority.[53] Accordingly, it would ordinarily be permissible for a local government to charge a fee for regulatory activities, such as inspection and permit programs. However, the IPR statutes limit a local government's authority in this area: a tax or fee may be levied on residential rental property in either of the following two instances. First, a fee may be levied on *residential rental property* when the fee is also levied against *other commercial and residential properties*, unless some other general law expressly authorizes a special fee on residential rental property. Second, a fee may be levied against a unit or a property that meets one of the thresholds summarized in Table 2 for placing the unit or property in a registration or permit program.[54] A fee assessed in the second instance cannot exceed $500 "in any 12-month period in which the unit or property is found to have verified violations."[55] The statute's meaning regarding the 12-month period is explained in Questions 27 and 28.

27. A $500 fee may be levied against a unit or property "in any 12-month period in which the unit or property is found to have verified violations." However, properties identified as being in the "top 10%" of properties with crime or disorder problems may not have any "verified violations" because crime and disorder problems typically involve criminal or nuisance violations, whereas verified violations result only from housing ordinance violations. Does this mean that the $500 fee cannot be assessed against "top 10%" crime or disorder properties?

A $500 fee can be assessed against "top 10%" crime or disorder properties, but the statutory language is potentially confusing and requires some explanation. The reference to "verified violations" with regard to the $500 fee is problematic because "top 10%" crime or disorder properties might not have any verified violations, suggesting that it might not be possible to levy a fee against such properties. Recall that verified violations result only from violations of *housing*

53. *See* Homebuilders Ass'n of Charlotte, Inc. v. City of Charlotte, 336 N.C. 37, 46 (1994) (concluding that a city has authority to assess user fees for a variety of governmental regulatory services and for the use of public facilities, provided such fees are reasonable).

54. More specifically, subdivision (iii) of G.S. 153A-364(c) (counties) and G.S. 160A-424(c) (cities) authorizes a fee "applicable only to an individual rental unit or property described in [subdivision (i) of subsection (c)] so long as the fee does not exceed five hundred dollars ($500.00) in any 12-month period in which the unit or property is found to have verified violations."

55. *Id.*

codes or ordinances,[56] whereas crime and disorder problems typically result from *criminal or nuisance* violations, not housing code violations. Could it be that the General Assembly meant to allow fees to be levied against rental units with verified violations but not against "top 10%" crime or disorder properties?

No. The IPR statutes must have intended to authorize fees against "top 10%" crime or disorder properties as well because the fee clause allows fees to be assessed against "an individual rental unit *or property* described in subdivision (i)."[57] When does subdivision (i) refer to a *property* (as opposed to an individual rental unit)? As illustrated in Table 2, a *property* may be placed in a registration or permit program when that property is identified as being in the top 10% of properties with crime or disorder problems. Thus, to give meaning to the term "property" as used in the fee clause, it must be the case that the fee may be levied against "top 10%" crime or disorder properties.[58]

28. The fee levied against a unit or property must "not exceed five hundred dollars ($500.00) in any 12-month period in which the unit or property is found to have verified violations." How should a local government reconcile this 12-month period with other seemingly inconsistent time periods provided in the IPR statutes?

A fee may be levied against units or properties meeting the requirements of subdivision (c)(i) (as summarized in Table 2), but the fee must "not exceed five hundred dollars ($500.00) in any 12-month period" in which verified violations are found. However, the reference to "any 12-month period" is not consistent with the time periods set forth in subdivision (c)(i): namely, determinations about subdivision (c)(i) conditions are made on a "rolling" 12-month basis for individual units with verified violations, and determinations for crime or disorder violations are made at any time interval selected by the governing board. Neither time frame is strictly consistent with a fee being assessed in "any 12-month period." The inconsistency in each case is discussed below.

Individual units with verified violations. When an individual unit reaches one of the verified violation thresholds described in Table 2 during a "rolling 12-month period," it is advisable to reconcile the verified violation period ("rolling 12-month period") with the fee period ("any 12-month period"). The following scenario illustrates one way to match up the two periods. Suppose that an individual unit reaches the verified violation threshold during a rolling 12-month period. The full $500 fee could be assessed against the individual unit as soon as the verified violation threshold was reached. The fee, allowable during "any 12-month period," could apply to the 12 months prior to and including the date on which the unit reached the verified violation threshold. Then suppose that same unit was inspected two months later and was again found to meet one of the Table 2 verified violation thresholds. A fee could once again be assessed, and the new 12-month period could be that which immediately follows the 12-month period designated for the first fee. Finally, suppose that one month later, the unit was inspected once again and found to meet a verified violation threshold for a third time. A third $500 fee could not be assessed until the 12-month period for the second $500 fee had expired.

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56. G.S. 153A-364(c)(1)–(2) (counties); G.S. 160A-424(c)(1)–(2) (cities). See also Question 5 for a discussion about the term "verified violation."

57. G.S. 160A-424(c)(iii). The same provision in G.S. 153A-364 refers to "clause (i)" rather than "subdivision (i)." Subdivision (i) of subsection (c) describes thresholds for registration and permit programs and is summarized in Table 2.

58. *See supra* note 30.

Top 10% with crime or disorder properties. A property identified as being in the "top 10%" of properties with crime or disorder problems could be assessed a fee each time it was so identified, provided the fee never exceeds $500 in "any 12-month period." The following scenario illustrates the options. Suppose a local government elects to identify its "top 10%" crime and disorder properties on a semi-annual basis. The local government could implement one of two possible policies. The first option would divide the maximum fee between the semi-annual assessment periods. In other words, only half of the maximum annual fee (or $250) would be assessed each time a property was identified as a "top 10%" property in the semi-annual assessment. Under this option, even if a property remained in the "top 10%" consistently over every six-month period (renewed at each semi-annual assessment), the $250 fee would never exceed the $500 maximum in any 12-month period for that property. The second (perhaps more complicated to administer) option would front load the fee by applying the maximum $500 fee when a property is first identified as being a "top 10%" crime or disorder property during a semi-annual assessment. If the property is once again identified as a "top 10%" property six months later in the next semi-annual assessment, the local government could not assess another $500 fee until 12 months had passed since the first $500 fee.

29. Against whom is the fee assessed—the owner or the tenant?

The fee is described in the IPR statutes as a "fee or tax on residential rental property" and as being "applicable only to an individual rental unit or property." The fee is not described in terms of being assessed against an individual; rather, the fee appears to be assessed *in rem*. Thus, the fee authorized by the IPR statutes is levied against the property and, as such, is ultimately the responsibility of the owner.

30. The IPR law clearly prohibits a local government from making enrollment in a government program a condition of obtaining a certificate of occupancy (CO) for residential rental property. However, it specifically allows a "permit or permission" program to be imposed when certain thresholds are reached, as summarized in Table 2. How are these different? In other words, why is withholding a CO always prohibited but a permit requirement is sometimes allowed?

A CO is a particular kind of permit that typically is issued upon completion of construction of a building—and prior to occupancy—to certify that the building complies with building standards and is ready for human occupancy.[59] Some local governments also condition issuance of a CO on compliance with other local ordinances and codes applicable to the building, even though that practice is not expressly authorized by statute. Thus, prior to the 2011 IPR enactment, local governments that had enacted rental property registration and permit programs might have required enrollment in those programs prior to issuing a CO. This practice is no longer permitted. The permit programs allowed under the IPR statutes cannot be enforced by withholding a CO; rather, they may be imposed only on buildings that have already received a CO.

Prior to the 2011 enactment of the IPR law, some residential rental property permit programs used the term "rental unit certificate of occupancy" to describe a rental permit program. To avoid confusion, the term *certificate of occupancy* should not be associated with rental unit permit programs.

59. *See, e.g.*, G.S. 143-139.2 & G.S. 160A-374.

31. Can a local government impose a criminal or civil penalty against owners and landlords found to be in violation of a permit or registration program?

Generally, violation of any city or county ordinance is a misdemeanor, and the ordinance may impose a fine, imprisonment, or civil penalty pursuant to G.S. 153A-123(b) (counties) and G.S. 160A-175(b) (cities), subject to the maximum penalties provided in G.S. 14-4. That general authority may be used to penalize violations of local permit programs.

Registration programs are a different matter. The IPR statutes explicitly prohibit a local government from making violation of a residential rental registration ordinance punishable as a criminal offense. Accordingly, violations of registration ordinances may be penalized only through the use of non-criminal civil penalties and injunctive relief.

Local governments should weigh the advantages of imposing non-criminal civil penalties as compared to criminal fines in any case. Typically, criminal fines—and civil penalties for violations that are punished as criminal offenses—must be turned over to the school system.[60] However, it may be possible for local governments to retain the proceeds of civil penalties if (1) the scope of the penalty is designed to accomplish restitution only for actual damages and compliance costs and (2) enforcement through criminal citation is prohibited (as is the case for violations of registration programs). Retention of proceeds from civil penalties in this way is based on a nuanced interpretation of North Carolina case law.[61] Local governments are advised to consult their attorneys when crafting any civil penalty with the intent of retaining the proceeds.

32. Would a business registration program and associated nominal fee, if applied to the occupation or business of being a landlord, violate the IPR statutes' prohibitions against rental registration programs or levying a "special fee or tax" on residential rental property (that is not also levied against other commercial and residential properties)?

It is reasonable to conclude that a business registration requirement that includes landlords is permissible, provided it is crafted to avoid the prohibitions in the IPR statutes. The purpose of a business registration program is to give local governments awareness of the businesses operating within their jurisdictional boundaries. Business registration programs typically require businesses to provide basic information to the local government (type of business, addresses of office and places of business, registered agent, etc.) and to pay a nominal fee for administration of the registration program. The statutory authority for instituting such programs and charging a nominal fee is derived from a local government's general ordinance-making authority (G.S. 153A-121 and G.S. 160A-174) and the more specific authority to regulate businesses (G.S. 153A-134 and G.S. 160A-194).[62] The question is whether the IPR statutes, which ban any "special fee or tax on residential rental property that is not also levied against other commercial and residential properties" and which prohibit registration of "rental property" except

60. N.C. Const. art. IX, § 7.

61. *See, e.g.,* N.C. Sch. Bds. Ass'n v. Moore, 359 N.C. 474 (2005). *See also* David M. Lawrence, *Fines, Penalties, and Forfeitures: An Historical and Comparative Analysis*, 65 N.C. L. Rev. 49 (1986); Shea Riggsbee Denning, *Public School Funding in the Summer of 2005:* North Carolina School Board Association v. Moore, Local Gov't L. Bull. No. 108 (School of Government, Nov. 2005); Owens, *supra* note 28, at 238–41.

62. For a fuller discussion of business registration programs, see Trey Allen, *Business Registration Programs: 10 Questions and Answers*, Coates' Canons: NC Loc. Gov't L. Blog (Aug. 28, 2015), http://canons.sog.unc.edu/business-registration-fees-a-few-questions-and-answers/.

for problem properties, thereby prohibit landlords from being included in a general business registration program. The answer is no.

A business registration program that includes landlords among several categories of businesses is arguably permissible. The prohibitions in the IPR statutes pertain to actions on property—either a "special fee or tax on residential rental property" or an attempt to register "rental property." However, a business registration program is not applied to property at all. It applies to the business of being a landlord, not to the residential rental properties themselves. Could a business registration program run afoul of the IPR statutes? Perhaps, if the business registration program applied solely to landlords or attempted to collect a fee based on the number of residential rental properties. Such a program might be vulnerable to legal challenge because it could be viewed by a court as a rental property registration program, or the fee could be characterized as a fee on residential rental property rather than as a general registration program applying to several categories of business.

33. Are vacant property registration programs permissible under the IPR statutes?

Yes. A vacant property registration program has three primary components: (1) it requires vacant buildings or properties of any kind to be registered with the local government; (2) it directs inspectors to periodically examine the exterior of registered properties and, as required, conduct interior inspections for fire code compliance and when violations are observable from outside the property; and (3) it assesses a fee on registered properties to cover the costs of inspections and administration of the program.[63] Each of these components will be examined in light of the limitations imposed by the IPR statutes.

The first component of a vacant property registration program is a requirement that all vacant properties—residential, commercial, rental or otherwise—be registered with the local government. This registration requirement does not violate any of the IPR law's prohibitions. The IPR law prohibits only registration programs that (1) require an owner to register or obtain a permit prior to renting or leasing residential property or (2) make participation in a government program a condition of obtaining a certificate of occupancy. Vacant property registration programs do not employ either prohibited mechanism, as they do not attempt to regulate whether an owner may rent out property and participation is not required as a condition of obtaining a certificate of occupancy. A vacant property registration program would risk running afoul of the prohibitions in the IPR statutes if it attempted to target vacant residential rental properties specifically as opposed to applying generally to vacant properties of any kind.

Second, vacant property registration programs typically involve external examinations of property to ensure that the property is secure and its appearance is acceptable. This type of external observation is clearly authorized by the IPR statutes. After all, one of the reasonable cause thresholds for interior inspections under the IPR statutes is reached when code violations are observable from outside the property, thereby plainly implying that inspectors are permitted to periodically assess property exteriors from public rights-of-way. Vacant property programs are primarily concerned with external appearances, and interior inspections are typically conducted only when a code violation is observable from outside the property. The exception is that

63. For further analysis of vacant property registration programs under North Carolina law, see C. Tyler Mulligan, *Toward a Comprehensive Program for Regulating Vacant or Abandoned Dwellings in North Carolina: The General Police Power, Minimum Housing Standards, and Vacant Property Registration*, 32 Campbell L. Rev. 1 (2009).

regular fire safety inspections of the interior are usually required as part of a vacant property registration program, but the IPR statutes specifically allow such inspections provided they are conducted in accordance with North Carolina fire prevention code.[64]

Third, most vacant property registration programs levy a fee on all registered properties. The IPR statutes prohibit levying fees against residential rental properties unless the fee is "also levied against other commercial and residential properties." Because the fee typically assessed as part of a vacant property registration program does not single out rental properties—the fee is assessed against vacant properties of all kinds—it is permitted under the IPR statutes.

Appeals

34. What right of appeal is granted?

The 2017 enactment added new subsection (f) to the IPR statutes, setting forth a process for appeal of a local government "decision" to take "action against an individual rental unit under this section."[65] The right to appeal is granted to the "owner of the individual rental unit," who may appear in person or be represented by an agent or attorney.

35. Suppose the inspection department has found reasonable cause for inspection of a residential rental unit and obtains an administrative inspection warrant to conduct the inspection. When the inspector arrives to inspect the unit, may the landlord turn the inspector away on the basis that the landlord intends to file an appeal?

No. Once an administrative inspection warrant has been obtained by the inspection department, the inspector proceeds with the inspection pursuant to G.S. 15-27.2 and the authority of the issuing court.

36. An owner's right to appeal pertains only to an "action against an individual rental unit under this section." May an owner appeal an action of a broader scope, such as identifying a property as being within the top 10% of properties with crime or disorder problems or designating a targeted area for periodic inspections in response to blighted conditions?

An owner's access to the appeal process set forth by subsection (f) of the IPR statutes is limited to actions "against an individual rental unit." By the bare terms of the statute, the statutory appeal process is not available to owners when the scope goes beyond an individual unit, such as an action identifying an entire property as a "top 10%" crime or disorder property or an action designating a geographic area for a targeted effort. In such cases, although an owner would not have recourse through the appeal process delineated in the IPR statutes, an owner could still seek a remedy in court.

64. *See* G.S. 58-79-20.

65. G.S. 153A-364(f) (counties); G.S. 160A-424(f) (cities).

37. The IPR statutes name several bodies that can hear appeals of actions against individual rental units, including the housing appeals board and zoning board of adjustment. Those boards sit as quasi-judicial bodies when they make decisions about minimum housing orders or zoning variances or hear appeals of administrative determinations.[66] Do those bodies sit in a quasi-judicial role when evaluating an appeal from an "action against an individual rental unit?"

Yes. Two key factors trigger quasi-judicial classification: "finding of facts regarding the specific proposal and the exercise of some discretion in applying the standards of the ordinance."[67] An appeal of an action taken pursuant to an IPR program involves both the ascertainment of facts and the exercise of discretion in determining whether the program requirements were correctly applied to the facts as determined. Furthermore, an appeal from an IPR action is highly analogous to an appeal of a housing code or zoning determination. Indeed, the statute authorizing local boards of adjustment specifically allows that the board "may hear appeals arising out of any other ordinance that regulates land use or development" and states that "[t]he board of adjustment shall follow quasi-judicial procedures when deciding appeals."[68] Given the nature of the decision and the similarity to other quasi-judicial appeals, a court very likely would determine that a board must follow quasi-judicial procedures when it hears an appeal under the IPR statutes.[69]

66. Cty. of Lancaster, S.C. v. Mecklenburg Cty., 334 N.C. 496, 507 (1993) (explaining that in making quasi-judicial decisions, decision makers must "investigate facts, or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them" and that "[i]n the zoning context, these quasi-judicial decisions involve the application of zoning policies to individual situations, such as variances, special and conditional use permits, and appeals of administrative determinations."); Carolina Holdings, Inc. v. Hous. Appeals Bd. of City of Charlotte, 149 N.C. App. 579, 584 (2002).

67. *County of Lancaster*, 334 N.C. at 507; *see also* Humble Oil & Ref. Co. v. Bd. of Aldermen of Town of Chapel Hill, 284 N.C. 458, 469 (1974) ("When a board of aldermen, a city council, or zoning board hears evidence to determine the existence of facts and conditions upon which the ordinance expressly authorizes it to [make a determination], it acts in a quasi-judicial capacity.").

68. G.S. 160A-388(b1) & (a1).

69. Quasi-judicial determinations are subject to superior court review pursuant to G.S. 160A-393.

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Appendix A: S.L. 2016-122 (the IPR Law)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

SESSION LAW 2016-122
SENATE BILL 326

AN ACT REVISING THE CONDITIONS UNDER WHICH COUNTIES AND CITIES MAY INSPECT BUILDINGS OR STRUCTURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-364 reads as rewritten:
"**§ 153A-364. Periodic inspections for hazardous or unlawful conditions.**

(a) The inspection department may make periodic inspections, subject to the board of commissioners' directions, for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in buildings or structures within its territorial jurisdiction. However, when the inspection department determines that a safety hazard exists in one of the dwelling units within a multifamily building, which in the opinion of the inspector poses an immediate threat to the occupant, the inspection department may inspect, in the absence of a specific complaint and actual knowledge of the unsafe condition, additional dwelling units in the multifamily building to determine if that same safety hazard exists. Except as provided in subsection (b) of this section, the inspection department may make periodic inspections only when there is reasonable cause to believe that unsafe, unsanitary, or otherwise hazardous or unlawful conditions may exist in a residential building or structure. For purposes of this section, the term "reasonable cause" means any of the following: (i) the ~~landlord or owner~~property has a history of more than ~~two~~ four verified violations of the housing ordinances or codes within a rolling 12-month period; (ii) there has been a complaint that substandard conditions exist within the building or there has been a request that the building be inspected; (iii) the inspection department has actual knowledge of an unsafe condition within the building; or (iv) violations of the local ordinances or codes are visible from the outside of the property. In conducting inspections authorized under this section, the inspection department shall not discriminate between single-family and multifamily ~~buildings.~~buildings or between owner-occupied and tenant-occupied buildings. In exercising these powers, each member of the inspection department has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action. Nothing in this section shall be construed to prohibit periodic inspections in accordance with State fire prevention code or as otherwise required by State law.

(b) A county may require periodic inspections as part of a targeted effort to respond to blighted or potentially blighted conditions within a geographic area that has been designated by the county commissioners. However, the total aggregate of targeted areas in the county at any one time shall not be greater than one square mile or five percent (5%) of the area within the county, whichever is greater. A targeted area designated by the county shall reflect the county's stated neighborhood revitalization strategy and shall consist of property that meets the definition of a "blighted area" or "blighted parcel" as those terms are defined in G.S. 160A-503(2) and G.S. 160A-503(2a), respectively, except that for purposes of this subsection the planning commission is not required to make a determination as to the property. The county shall ~~not discriminate in its selection of areas or housing types to be targeted and shall~~ (i) provide notice to all owners and residents of properties in the affected area about the periodic inspections plan and information regarding a public hearing regarding the plan; (ii) hold a public hearing regarding the plan; and (iii) establish a plan to address the ability of low-income residential property owners to comply with minimum housing code standards. A residential building or structure that is subject to periodic inspections by the North Carolina Housing Finance Agency (hereinafter "Agency") shall not be subject to periodic inspections

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under this subsection if the Agency has issued a finding that the building or structure is in compliance with federal standards established by the United States Department of Housing and Urban Development to assess the physical condition of residential property. The owner or manager of a residential building or structure subject to periodic inspections by the Agency shall, within 10 days of receipt, submit to the inspection department a copy of the Compliance Results Letter issued by the Agency showing that the residential building or structure is in compliance with federal housing inspection standards. If the owner or manager fails to submit a copy of the Compliance Results Letter as provided in this subsection, the residential building or structure shall be subject to periodic inspections as provided in this subsection until the Compliance Results Letter is submitted to the inspection department.

(c) In no event may a county do any of the following: (i) adopt or enforce any ordinance that would require any owner or manager of rental property to obtain any permit or permission from the county to lease or rent residential real ~~property.~~property or to register rental property with the county, except for those individual rental units that have either more than ~~three~~ four verified violations of housing ordinances or codes in a rolling 12-month period or two or more verified violations in a rolling 30-day period, or upon the property being identified within the top ~~10%~~ ten percent (10%) of properties with crime or disorder problems as set forth in a local ordinance; (ii) require that an owner or manager of residential rental property enroll or participate in any governmental program as a condition of obtaining a certificate of ~~occupancy; or (iii) except as provided in subsection (d) of this section,~~occupancy; (iii) levy a special fee or tax on residential rental property that is not also levied against other commercial and residential ~~properties.~~properties, unless expressly authorized by general law or applicable only to an individual rental unit or property described in clause (i) of this subsection and the fee does not exceed five hundred dollars ($500.00) in any 12-month period in which the unit or property is found to have verified violations; (iv) provide that any violation of a rental registration ordinance is punishable as a criminal offense; or (v) require any owner or manager of rental property to submit to an inspection before receiving any utility service provided by the city. For purposes of this section, the term "verified violation" means all of the following:

(1) The aggregate of all violations of housing ordinances or codes found in an individual rental unit of residential real property during a 72-hour period.

(2) Any violations that have not been corrected by the owner or manager within 21 days of receipt of written notice from the county of the violations. Should the same violation occur more than two times in a 12-month period, the owner or manager may not have the option of correcting the violation. If the housing ordinance or code provides that any form of prohibited tenant behavior constitutes a violation by the owner or manager of the rental property, it shall be deemed a correction of the tenant-related violation if the owner or manager, within 30 days of receipt of written notice of the tenant-related violation, brings a summary ejectment action to have the tenant evicted.

~~(d) A county may levy a fee for residential rental property registration under subsection (c) of this section for those rental units which have been found with more than two verified violations of housing ordinances or codes within the previous 12 months or upon the property being identified within the top 10% of properties with crime or disorder problems as set forth in a local ordinance. The fee shall be an amount that covers the cost of operating a residential registration program and shall not be used to supplant revenue in other areas. Counties using registration programs that charge registration fees for all residential rental properties as of June 1, 2011, may continue levying a fee on all residential rental properties as follows:~~

~~(1) For properties with 20 or more residential rental units, the fee shall be no more than fifty dollars ($50.00) per year.~~

~~(2) For properties with fewer than 20 but more than three residential rental units, the fee shall be no more than twenty-five dollars ($25.00) per year.~~

~~(3) For properties with three or fewer residential rental units, the fee shall be no more than fifteen dollars ($15.00) per year.~~

(e) If a property is identified by the county as being in the top ten percent (10%) of properties with crime or disorder problems, the county shall notify the landlord of any crimes, disorders, or other violations that will be counted against the property to allow the landlord an opportunity to attempt to correct the problems. In addition, the county and the county sheriff's office shall assist the landlord in addressing any criminal activity, which may include testifying

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in court in a summary ejectment action or other matter to aid in evicting a tenant who has been charged with a crime. If the county or the county sheriff's office does not cooperate in evicting a tenant, the tenant's behavior or activity at issue shall not be counted as a crime or disorder problem as set forth in the local ordinance, and the property may not be included in the top ten percent (10%) of properties as a result of that tenant's behavior or activity.

(f) If the county takes action against an individual rental unit under this section, the owner of the individual rental unit may appeal the decision to the housing appeals board or the zoning board of adjustment, if operating, or the planning board if created under G.S. 153A-321, or if neither is created, the governing board. The board shall fix a reasonable time for hearing appeals, shall give due notice to the owner of the individual rental unit, and shall render a decision within a reasonable time. The owner may appear in person or by agent or attorney. The board may reverse or affirm the action, wholly or partly, or may modify the action appealed from, and may make any decision and order that in the opinion of the board ought to be made in the matter."

SECTION 2. G.S. 160A-424 reads as rewritten:

"**§ 160A-424. Periodic ~~inspections.~~inspections for hazardous or unlawful conditions.**

(a) The inspection department may make periodic inspections, subject to the council's directions, for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in buildings or structures within its territorial jurisdiction. However, when the inspection department determines that a safety hazard exists in one of the dwelling units within a multifamily building, which in the opinion of the inspector poses an immediate threat to the occupant, the inspection department may inspect, in the absence of a specific complaint and actual knowledge of the unsafe condition, additional dwelling units in the multifamily building to determine if that same safety hazard exists. Except as provided in subsection (b) of this section, the inspection department may make periodic inspections only when there is reasonable cause to believe that unsafe, unsanitary, or otherwise hazardous or unlawful conditions may exist in a residential building or structure. For purposes of this section, the term "reasonable cause" means any of the following: (i) the ~~landlord or owner~~property has a history of more than ~~two~~ four verified violations of the housing ordinances or codes within a rolling 12-month period; (ii) there has been a complaint that substandard conditions exist within the building or there has been a request that the building be inspected; (iii) the inspection department has actual knowledge of an unsafe condition within the building; or (iv) violations of the local ordinances or codes are visible from the outside of the property. In conducting inspections authorized under this section, the inspection department shall not discriminate between single-family and multifamily ~~buildings.~~buildings or between owner-occupied and tenant-occupied buildings. In exercising this power, members of the department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials. Nothing in this section shall be construed to prohibit periodic inspections in accordance with State fire prevention code or as otherwise required by State law.

(b) A city may require periodic inspections as part of a targeted effort to respond to blighted or potentially blighted conditions within a geographic area that has been designated by the city council. However, the total aggregate of targeted areas in the city at any one time shall not be greater than one square mile or five percent (5%) of the area within the city, whichever is greater. A targeted area designated by the city shall reflect the city's stated neighborhood revitalization strategy and shall consist of property that meets the definition of a "blighted area" or "blighted parcel" as those terms are defined in G.S. 160A-503(2) and G.S. 160A-503(2a), respectively, except that for purposes of this subsection the planning commission is not required to make a determination as to the property. The ~~municipality shall not discriminate in its selection of areas or housing types to be targeted and~~ city shall (i) provide notice to all owners and residents of properties in the affected area about the periodic inspections plan and information regarding a public hearing regarding the plan; (ii) hold a public hearing regarding the plan; and (iii) establish a plan to address the ability of low-income residential property owners to comply with minimum housing code standards. A residential building or structure that is subject to periodic inspections by the North Carolina Housing Finance Agency (hereinafter "Agency") shall not be subject to periodic inspections under this subsection if the Agency has issued a finding that the building or structure is in compliance with federal standards established by the United States Department of Housing and Urban Development to assess the physical condition of residential property. The owner or manager of a residential

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building or structure subject to periodic inspections by the Agency shall, within 10 days of receipt, submit to the inspection department a copy of the Compliance Results Letter issued by the Agency showing that the residential building or structure is in compliance with federal housing inspection standards. If the owner or manager fails to submit a copy of the Compliance Results Letter as provided in this subsection, the residential building or structure shall be subject to periodic inspections as provided in this subsection until the Compliance Results Letter is submitted to the inspection department.

(c) In no event may a city do any of the following: (i) adopt or enforce any ordinance that would require any owner or manager of rental property to obtain any permit or permission from the city to lease or rent residential real ~~property,~~property or to register rental property with the city, except for those ~~properties~~ individual rental units that have either more than ~~three~~ four verified violations in a rolling 12-month period or two or more verified violations in a rolling 30-day period, or upon the property being identified within the top ~~10%~~ ten percent (10%) of properties with crime or disorder problems as set forth in a local ordinance; (ii) require that an owner or manager of residential rental property enroll or participate in any governmental program as a condition of obtaining a certificate of occupancy; ~~or (iii) except as provided in subsection (d) of this section,~~ (iii) levy a special fee or tax on residential rental property that is not also levied against other commercial and residential ~~properties.~~properties, unless expressly authorized by general law or applicable only to an individual rental unit or property described in subdivision (i) of this subsection and the fee does not exceed five hundred dollars ($500.00) in any 12-month period in which the unit or property is found to have verified violations; (iv) provide that any violation of a rental registration ordinance is punishable as a criminal offense; or (v) require any owner or manager of rental property to submit to an inspection before receiving any utility service provided by the city. For purposes of this section, the term "verified violation" means all of the following:

(1) The aggregate of all violations of housing ordinances or codes found in an individual rental unit of residential real property during a 72-hour period.

(2) Any violations that have not been corrected by the owner or manager within 21 days of receipt of written notice from the city of the violations. Should the same violation occur more than two times in a 12-month period, the owner or manager may not have the option of correcting the violation. If the housing ordinance or code provides that any form of prohibited tenant behavior constitutes a violation by the owner or manager of the rental property, it shall be deemed a correction of the tenant-related violation if the owner or manager, within 30 days of receipt of written notice of the tenant-related violation, brings a summary ejectment action to have the tenant evicted.

~~(d) A city may levy a fee for residential rental property registration under subsection (c) of this section for those rental units which have been found with more than two verified violations of local ordinances within the previous 12 months or upon the property being identified within the top 10% of properties with crime or disorder problems as set forth in a local ordinance. The fee shall be an amount that covers the cost of operating a residential registration program and shall not be used to supplant revenue in other areas. Cities using registration programs that charge registration fees for all residential rental properties as of June 1, 2011, may continue levying a fee on all residential rental properties as follows:~~

~~(1) For properties with 20 or more residential rental units, the fee shall be no more than fifty dollars ($50.00) per year.~~

~~(2) For properties with fewer than 20 but more than three residential rental units, the fee shall be no more than twenty-five dollars ($25.00) per year.~~

~~(3) For properties with three or fewer residential rental units, the fee shall be no more than fifteen dollars ($15.00) per year.~~

(e) If a property is identified by the city as being in the top ten percent (10%) of properties with crime or disorder problems, the city shall notify the landlord of any crimes, disorders, or other violations that will be counted against the property to allow the landlord an opportunity to attempt to correct the problems. In addition, the city and the city's police department or, if the city has no police department, the county sheriff's office shall assist the landlord in addressing any criminal activity, which may include testifying in court in a summary ejectment action or other matter to aid in evicting a tenant who has been charged with a crime. If the city, the city's police department, or where applicable the county sheriff's office

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does not cooperate in evicting a tenant, the tenant's behavior or activity at issue shall not be counted as a crime or disorder problem as set forth in the local ordinance, and the property may not be included in the top ten percent (10%) of properties as a result of that tenant's behavior or activity.

(f) If the city takes action against an individual rental unit under this section, the owner of the individual rental unit may appeal the decision to the housing appeals board or the zoning board of adjustment, if operating, or the planning board, if created under G.S. 160A-361, or if neither is created, the governing board. The board shall fix a reasonable time for hearing appeals, shall give due notice to the owner of the individual rental unit, and shall render a decision within a reasonable time. The owner may appear in person or by agent or attorney. The board may reverse or affirm the action, wholly or partly, or may modify the action appealed from, and may make any decision and order that in the opinion of the board ought to be made in the matter."

SECTION 3. This act becomes effective January 1, 2017.

In the General Assembly read three times and ratified this the 1st day of July, 2016.

s/ Tom Apodaca
Presiding Officer of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 8:08 a.m. this 28th day of July, 2016

Senate Bill 326 Session Law 2016-122 Page 5

Appendix B: Affidavit to Obtain Administrative Inspection Warrant for Particular Condition or Activity (side one)

(TYPE OR PRINT IN BLACK INK)

STATE OF NORTH CAROLINA

In The General Court Of Justice

_____ County

AFFIDAVIT TO OBTAIN ADMINISTRATIVE INSPECTION WARRANT FOR PARTICULAR CONDITION OR ACTIVITY

I, _____, being
(name and position)

duly sworn and examined under oath, state under oath that there is probable cause for believing that there is

_____
(describe condition, object, activity, or circumstance which the search is intended to check or reveal)

at the property owned or possessed by _____

and described as follows: _____

_____
(precisely describe the property to be inspected)

The facts which establish probable cause to believe this are: _____

Signature Of Applicant

Name Of Applicant (Type Or Print)

SWORN AND SUBSCRIBED TO BEFORE ME:

Date

Signature

☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*
☐ *Magistrate* ☐ *District Court Judge* ☐ *Superior Court Judge*

IMPORTANT: ***Attach the Affidavit to the WARRANT if not on reverse side.***

AOC-CR-913M, Rev. 7/01

(Over)

Appendix B: Affidavit to Obtain Administrative Inspection Warrant for Particular Condition or Activity (side two)

(TYPE OR PRINT IN BLACK INK)

STATE OF NORTH CAROLINA

In The General Court Of Justice

_____ County

ADMINISTRATIVE INSPECTION WARRANT FOR PARTICULAR CONDITION OR ACTIVITY

G.S. 15-27.2; 58-79-1

TO ANY LAWFUL OFFICIAL EMPOWERED TO CONDUCT THE INSPECTION AUTHORIZED BY THIS WARRANT:

The applicant named on the accompanying affidavit, which is hereby incorporated by reference, being duly sworn, has stated to me that there is a condition, object, activity, or circumstance legally justifying an inspection of the property described in that affidavit. I have examined this applicant under oath or affirmation and have verified the accuracy of the matters in the affidavit establishing the legal grounds for this Warrant. YOU ARE HEREBY COMMANDED TO INSPECT THE PROPERTY DESCRIBED IN THE ACCOMPANYING AFFIDAVIT.

This inspection is authorized to check or reveal the conditions, objects, activities, or circumstances indicated in the accompanying affidavit.

This Warrant must be served upon the owner or possessor of the property described in the accompanying affidavit. If the owner or possessor is not present on the property at the time of inspection and you have made reasonable but unsuccessful efforts to locate the owner or possessor, you may instead serve it by affixing this Warrant or a copy to the property.

THIS WARRANT MAY BE EXECUTED ONLY BETWEEN THE HOURS OF 8:00 A.M. AND 8:00 P.M. AND ONLY WITHIN 24 HOURS AFTER IT WAS ISSUED. IT MUST BE RETURNED WITHIN 48 HOURS AFTER IT WAS ISSUED. HOWEVER, IF THIS WARRANT IS ISSUED PURSUANT TO A FIRE INVESTIGATION AUTHORIZED BY G.S. 58-79-1, IT MAY BE EXECUTED AT ANY TIME WITHIN 48 HOURS AFTER IT IS ISSUED. IT MUST BE RETURNED WITHOUT UNNECESSARY DELAY AFTER ITS EXECUTION OR AFTER 48 HOURS FROM THE TIME IT WAS ISSUED IF IT WAS NOT EXECUTED.

Date	*Time* ☐ AM ☐ PM
Signature	
☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court* ☐ *Magistrate* ☐ *District Court Judge* ☐ *Superior Court Judge*	

OFFICER'S RETURN

I certify that this WARRANT was executed on the date and time shown below.

Date Of Execution	*Signature Of Inspecting Official*
Time Of Execution ☐ AM ☐ PM	*Name Of Inspecting Official (Type Or Print)*

CLERK'S ACCEPTANCE

This WARRANT has been returned to this office on the date and time shown below.

Date Of Return	*Signature*
Time Of Return ☐ AM ☐ PM	☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*

IMPORTANT: ***Attach the Affidavit to the WARRANT if not on reverse side.***

AOC-CR-913M, Side Two, Rev. 7/01

Appendix C: Affidavit to Obtain Administrative Inspection Warrant for Periodic Inspection (side one)

(TYPE OR PRINT IN BLACK INK)

STATE OF NORTH CAROLINA
In The General Court Of Justice

_____ County

AFFIDAVIT TO OBTAIN ADMINISTRATIVE INSPECTION WARRANT FOR PERIODIC INSPECTION

I, _____, being
(name and position)

duly sworn and examined under oath, state under oath that there is a program of inspection authorized by

_____
(identify statute or regulation authorizing inspection)

which naturally includes the property owned or possessed by _____
(name owner or possessor)

_____ and described as follows: _____

_____
(precisely describe the property to be inspected)

The program of inspection referred to covers the area _____

_____
(indicate town, county, or portion thereof, or other specific territory covered by inspection program)

_____

and is being conducted for the purpose of checking or revealing the following:

_____
(state conditions, objects, activities, or circumstances covered by inspection program)

_____

_____

This inspection program is a legal function of _____
(name agency)

and is under the supervision of _____
(identify person responsible for inspection program)

Signature Of Applicant

Name Of Applicant (Type Or Print)

SWORN AND SUBSCRIBED TO BEFORE ME:

Date

Signature

☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*
☐ *Magistrate* ☐ *District Court Judge* ☐ *Superior Court Judge*

IMPORTANT: Attach the Affidavit to the WARRANT if not on reverse side.

AOC-CR-914M, Rev. 7/2000

(Over)

Appendix C: Affidavit to Obtain Administrative Inspection Warrant for Periodic Inspection (side two)

(TYPE OR PRINT IN BLACK INK)

STATE OF NORTH CAROLINA
In The General Court Of Justice

_____ County

File No.

ADMINISTRATIVE INSPECTION WARRANT FOR PERIODIC INSPECTION

G.S. 15-27.2

TO ANY LAWFUL OFFICIAL EMPOWERED TO CONDUCT THE INSPECTION AUTHORIZED BY THIS WARRANT:

The applicant named on the accompanying affidavit, being duly sworn, has stated to me that the property described in that affidavit is to be inspected as part of a legally authorized program of inspection which naturally includes that property. I have examined this applicant under oath or affirmation and have verified the accuracy of the matters in the affidavit establishing the legal grounds for this Warrant. YOU ARE HEREBY COMMANDED TO INSPECT THE PROPERTY DESCRIBED IN THE ACCOMPANYING AFFIDAVIT.

This inspection is authorized to check or reveal the conditions, objects, activities, or circumstances indicated in the accompanying affidavit as a purpose of the inspection program.

This Warrant must be served upon the owner or possessor of the property described in the accompanying affidavit. If the owner or possessor is not present on the property at the time of inspection and you have made reasonable but unsuccessful efforts to locate the owner or possessor, you may instead serve it by affixing this Warrant or a copy to the property.

THIS WARRANT MAY BE EXECUTED ONLY BETWEEN THE HOURS OF 8:00 A.M. AND 8:00 P.M. AND ONLY WITHIN 24 HOURS AFTER IT WAS ISSUED. IT MUST BE RETURNED WITHIN 48 HOURS AFTER IT WAS ISSUED.

Date Issued	*Time Issued* ☐ AM ☐ PM
Signature	
☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court* ☐ *Magistrate* ☐ *District Court Judge* ☐ *Superior Court Judge*	

OFFICER'S RETURN

I certify that this WARRANT was executed on the date and time shown below.

Date Of Execution	*Signature Of Inspecting Official*
Time Of Execution ☐ AM ☐ PM	*Name Of Inspecting Official (Type Or Print)*

CLERK'S ACCEPTANCE

This WARRANT has been returned to this office on the date and time shown below.

Date Of Return	*Signature*
Time Of Return ☐ AM ☐ PM	☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*

IMPORTANT: ***Attach the Affidavit to the WARRANT if not on reverse side.***

AOC-CR-914M, Side Two, Rev. 7/2000