
S.O.P. #: 200-04

SUBJECT: Administrative Search Warrants

DIVISION: Investigative Services Division

Objective: To outline the procedures to be followed when applying for an administrative search warrant.

Purpose: Under Statutory Law and the County Code, Fire Marshals and Fire Investigators are granted right of entry powers for the purposes of conducting fire inspections and investigations. The following procedures describe the proper steps and documentation that are necessary when applying to a District Court Judge for an Administrative Search Warrant. A warrant should only be used when all other means to gain entry to inspect a premises have been exhausted and the occupant refuses to cooperate.

I. Right of Entry

- A. Fire Investigators - Article 38A, Section 8A of the Annotated Code of Maryland grants Fire Investigators the authority to apply for an administrative search warrant to enter any building, vehicle, or other premises, including residential occupancies, where a fire has occurred, in order to conduct an investigation. The scope of the search, however, cannot exceed the limits specified in the warrant.

- B. Fire Marshals - Article 38A, Section 8B of the Annotated Code of Maryland grants Fire Marshals the authority to apply for an administrative search warrant to conduct fire inspections of any premises for which they are empowered to make entry. Article 38A, Section 8 states that a Fire Marshal may enter any building or premises at reasonable hours, except those actually occupied for private dwelling purposes, to conduct a fire inspection. Section 16-3 of the Baltimore County Code also authorizes Baltimore County Fire Marshals to enter and inspect any occupancy in the County, during reasonable hours, except private single family dwellings. Section 16-6 (b) of the Baltimore County Code extends the same right to enter and inspect to any Fire Department personnel who are authorized to conduct fire inspections as part of their assigned duties.

II. Refusal to Allow Entry

- A. If suppression personnel are attempting to inspect an occupancy and the occupant or owner refuses to allow entry, the inspector should first offer to schedule the inspection at a more convenient time. If the owner/occupant continues to refuse to allow an inspection, all attempts to inspect will be documented on a Form 58 and forwarded to the District Fire Marshal, along with the referral for the inspection. If it is necessary to apply for a warrant, this documentation will become essential as evidence. The individual who wrote the report may be required to sign a sworn affidavit before a judge attesting its accuracy. The District Fire Marshal will notify their Lieutenant and the Administrative Captain of the necessity for an Administrative Search Warrant.

III. Obtaining an Administrative Search Warrant

- A. The following four (4) documents must be prepared by the applicant (i.e., District Fire Marshal or District Lieutenant) for the County Attorney's and Judge's signatures when applying for a search warrant:
1. Application for an Administrative Search Warrant (see Appendix A) - This document provides the judge with information about the defendant, the applicant, the section of law which specifies our authority to request a search warrant, and the reason for requesting the warrant. It must be signed by the County Attorney and the Assistant County Attorney who represents the Fire Department.
 2. Affidavit in Support for Administrative Search Warrant (see Appendix B for example) - This document is a detailed account of the events leading to the application for the warrant. It must be accurate and factual since it is a sworn statement and must be signed before a judge. In the affidavit, the affiant also attests to the accuracy of any reports that are presented to the judge as supporting evidence. The judge will also sign the affidavit after witnessing the affiant's signature.
 3. The Administrative Search Warrant (see Appendix C for example) - This document is the actual Administrative Search Warrant that the applicant (i.e., Fire Marshal) will serve on the property owner or occupant. The applicant must have three (3) copies prepared for the judge's signature (all copies must have original signatures). If the warrant is granted, the District Court Judge will sign and date the warrant. The judge may specify an expiration date for the warrant (up to 30 days after the issue date) or if no date is specified, the applicant must execute the warrant by serving the defendant within 15 days from the day that it is signed by the judge. If the applicant cannot execute the warrant before the expiration date, the applicant must return the warrant to the judge within five (5) days after the expiration. Every effort to serve the warrant as soon as possible will be made by the District Fire Marshal. If the warrant is successfully executed it must be returned to the judge within ten (10) days after execution.
 4. Return of Search Warrant Receipt (see Appendix D) - This document will be signed by the applicant and the judge when the applicant returns the search warrant to the judge after execution or upon expiration.
- B. Supporting Documentation - In addition to the above required documents, the applicant must present the judge with a copy of all applicable reports that are listed in the affidavit. The applicant must also provide copies of the applicable sections of the Annotated Code and Baltimore County Code which specifies the Fire Marshals' right to enter and inspect property and power to request search warrants. The following codes are referenced in the application and search warrant documents and will be provided by the applicant for the judge's examination:
1. Annotated Code of Maryland, Article 38A, Section 8B,
 2. Baltimore County Code, Chapter 16, Article I, Sections 16-3 and 16-6,
 3. Property Deed (to prove ownership if applicable),

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4. Any applicable sections of the current County or State Fire Codes.

NOTE: It is helpful to the judge if you highlight the areas of these code sections that specify your right to enter and inspect and your power to obtain a search warrant. Providing the judge with this information will expedite the processing of the warrant.

IV. Serving the Warrant

- A. The warrant must be served and returned to the judge within the specified time frame. The Fire Marshal serving a warrant will be accompanied by another person, preferably his/her supervisor. If necessary, you may obtain the assistance of police when serving the warrant. When it is necessary to request police assistance, the district officer and a detective from FID should be requested. The district police officer will probably not be familiar with an Administrative Search Warrant since they usually deal with Search and Seizure Warrants. The FID detectives are familiar with Administrative Warrants and they normally request the district uniform officer for assistance when serving a warrant.
- B. Provide one signed copy of the warrant for the owner/occupant. After the warrant is executed, the applicant will return a copy to the judge who will sign the Return of Search Warrant receipt. The applicant will keep a copy of the warrant and receipt and forward these to the Administrative Captain at Headquarters.

Appendix A

BALTIMORE COUNTY	:	IN THE
	:	
Plaintiff	:	DISTRICT COURT
	:	
v.	:	OF
	:	
[<i>owner/occupant's name</i>]	:	MARYLAND

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APPLICATION FOR AN ADMINISTRATIVE SEARCH WARRANT

Now comes Baltimore County, Maryland, a body corporate and politic, by its undersigned attorneys, who prays this Honorable Court sign this Search Warrant and for its probable cause states as follows:

1. Jurisdiction in this Court is proper by virtue of Courts and Judicial Proceedings Article, Annotated Code of Maryland, Sec. 4-401(8), 1995 Rpl. Vol. and Annotated Code of Maryland, Article 38A, Sec.8B.

2. That the County has a governmental interest to prevent development of conditions which are hazardous to public safety and a duty to enforce its fire laws.

3. The County believes, and therefore avers that there is probable cause to believe that _____ is the *owner/occupant* of property located at

Name of Defendant

_____ and is in violation of the Baltimore County Code, Title 16, Address of Occupancy

Fire Protection Articles I, Sec.16-3, et seq., by refusing to allow access to the above property for the purpose of conducting a Fire Safety Inspection by a duly appointed Fire Prevention Inspector of Baltimore County pursuant to Sec. 16-6 of the Baltimore County Code.

4. The above averance is based upon the Affirmation of

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[applicant's name] _____, dated _____, and prayed

to be made part of this Application. See Exhibit "A".

WHEREFORE, the County requests this Court to sign an Administrative Search Warrant of the entire property: (1) known as

[address of property to be searched] _____ titled in the name of _____

Address

[property owner's name] _____ and occupied by _____

Owner of Deed

[occupant] _____.

Tenant/Lessee and Address

also known as [alias if applicable] _____ and doing business as _____

Name of Company

Respectfully submitted,

[name of current County Attorney]
County Attorney

[name of Assistant County Attorney]
Assistant County Attorney
Baltimore County Office of Law
2nd Floor, Old Courthouse
400 Washington Avenue
Towson, Maryland 21286
410/887-4420

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Appendix B

Exhibit A

AFFIDAVIT IN SUPPORT FOR ADMINISTRATIVE SEARCH WARRANT

Your Affiant, Fire Marshal John A. Smith, has been a member of the Baltimore County Fire Department since 1976 and has been assigned to the Baltimore County Fire Marshal's Office since 1988.

On January 1, 1998, Fire Marshal John A. Smith received a fire inspection referral and request for assistance from Fire Specialist William Green of Fire Station 1. Fire Specialist Green stated in his request that, on December 18, 1997, Fire Fighter William Brown had attempted to perform a fire inspection at the office of 2020 Plumbtree Road, James M. Mason, Attorney at Law and that Fire Fighter Brown was denied entry.

On January 12, 1998 your Affiant, Fire Marshal John Smith, visited that premises and was told by James M. Mason that he, Mr. Mason, was denying entry to the premises and would not allow a fire inspection to be performed and that he would allow entry only under a search warrant. Mr. Mason stated that he knew your Affiant, Fire Marshal Smith, could obtain a warrant but felt he, Mr. Mason, should test the law.

Your Affiant, Fire Marshal John A. Smith, does hereby affirm and attest under penalty of perjury that the foregoing statement, and the statements contained in the official Baltimore County Fire Department records dated from February 11, 1997 to January 22, 1998, which bear my signature (attached), are true and correct to the best of my knowledge, information and belief.

FIRE MARSHAL JOHN A. SMITH
Affiant

DATE

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE THIS _____ Day of _____, 1998.

JUDGE
District Court for Baltimore County

Appendix C
District Court
For
Baltimore County

Administrative Search Warrant

TO ANY FIRE MARSHAL IN BALTIMORE COUNTY:

Affidavit having been made before me by Fire Marshal John A. Smith that James M. Mason is the occupant of 2020 Plumbtree Road, Suite 204, and is the resident agent for the owner of 2020 Plumbtree Road, X.Y.Z., Inc., a body corporate of the State of Maryland and that:

ON THE PREMISES KNOWN AS:

2020 Plumbtree Road, Suite 204, Baltimore, Maryland 21204, the office of James M. Mason, Attorney at Law, described as being located on the second floor of a two-story multiple tenant building with green aluminum siding, James M. Mason, on the 12th day of January, 1998, refused to allow Fire Marshal John A. Smith to enter the premises for the purpose of performing a fire inspection. The building is described as having three street addresses: 2020, 2022, and 2024 Windsor Mill Road. There are three mercantile occupancies on the first floor with a separate entrance for the second floor which is marked on the glass transom above the entrance with black numbers, 2020. There is a directory on the brick column to the right of the second floor entrance door, which lists J.M. Mason, Attorney at Law as a tenant. The entrance to Suite 204, which is located on the second floor, is identified by a wooden door with the numbers 204 marked on the door. Entry is sought to the tenant space of J.M. Mason, Attorney at Law, to perform a routine annual fire inspection, as required by Section F-107.2.4 of the Fire Prevention Code Baltimore County, as adopted by: Bill Number 81-97 and Bill Number 82-97, Section 16-42, Article II, Title "Fire Protection", Baltimore County Code, 1988. Furthermore, James M. Mason has failed to secure a Fire Inspection Certificate for the premises as required by the above referenced section of the Fire Prevention Code of Baltimore County.

I am satisfied that there is probable cause to believe that the occupant, James M. Mason, is in violation of the Fire Code of Baltimore County by refusing to allow access for a fire inspection of the premises

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described in this warrant by a full-time fire prevention inspector, who is employed by the Baltimore County Fire Department, and that the foregoing grounds for the Application for issuance of the ADMINISTRATIVE SEARCH WARRANT exists for these premises. Those grounds as stated on the Application and Affidavit attached hereto are incorporated herein. You are therefore commanded, with the necessary and proper assistance, to search forthwith the premises hereinabove described to conduct a fire prevention inspection for the purpose of ascertaining and causing to be corrected any conditions liable to cause fire, contribute to the spread of fire, interfere with firefighting operations, endanger life or any violations of the provisions of the intent of the Fire Prevention Code of Baltimore County and the State of Maryland, executing this Warrant, and leaving a copy of this Warrant, and returning a copy of same to me within ten (10) days after the execution of this Warrant; or if not served, to return this Warrant within five (5) days after the expiration, as required by law.

Dated this _____ day of _____, 1998.

Judge

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Appendix D

RETURN OF SEARCH WARRANT

Premises known as: 2020 Plumbtree Road, Suite 204, Baltimore, Maryland 21204.

No inventory.

Fire Marshal John A. Brown

Judge