

SIANA, BELLWOAR & MCANDREW, LLP
By: Sheryl L. Brown, I.D. # 59313
Christine D. Steere, I.D. # 84066
941 Pottstown Pike, Suite 200
Chester Springs, PA 19425
610-321-5500

ATTORNEYS FOR DEFENDANTS
BOROUGH OF POTTSTOWN
AND KEITH A. PLACE

DOROTHY RIVERA, et al.	:	
	:	IN THE COURT OF COMMON PLEAS
Plaintiffs,	:	MONTGOMERY COUNTY, PENNSYLVANIA
	:	
v.	:	
	:	No. 2017-04992
POTTSTOWN OF POTTSTOWN, et al.	:	
	:	
Defendants.	:	

**DEFENDANTS, BOROUGH OF POTTSTOWN AND KEITH A. PLACE'S
BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS TO PLAINTIFFS'
AMENDED COMPLAINT PURSUANT TO P.A.R.CIV.P. 1028(a)(4)**

Defendants, Borough of Pottstown and Keith A. Place ("Pottstown Defendants"), by and through their attorneys, Siana, Bellwoar & McAndrew, LLP, hereby submit this Brief in support of their Preliminary Objections to Plaintiffs' Amended Complaint

I. MATTER BEFORE THE COURT

The Pottstown Defendants primarily file Preliminary Objections seeking a demurrer, as the facts pleaded in the Amended Complaint demonstrate that Plaintiffs are unable to allege facts legally sufficient to establish their right to Declaratory Judgment as a matter of law.

II. STATEMENT OF QUESTIONS INVOLVED

A. Are Pottstown Borough's mandatory inspection requirements of rental properties (Chp. 11 Housing, Part 2 *Registration and Licensing of Residential Units* §§ 201, *et seq.*) constitutional pursuant to Article I, Section 8 of the Pennsylvania Constitution?

Suggested Answer: Yes.

B. Alternatively, are Plaintiffs entitled to a Declaratory Judgment that Pottstown Borough's mandatory inspection requirements of rental properties (Chp. 11 Housing, Part 2 *Registration and Licensing of Residential Units* §§ 201, *et seq.*) are unconstitutional pursuant to Article I, Section 8 of the Pennsylvania Constitution?

Suggested Answer: No.

C. Should Preliminary Objections be sustained in favor of Defendants where the facts pleaded in the Amended Complaint do not establish that Plaintiffs are entitled to a Declaratory Judgment as a matter of law?

Suggested Answer: Yes.

D. Should Preliminary Objections be sustained in favor of Defendant Keith A. Place where he is entitled to Official Immunity?

Suggested Answer: Yes.

III. PROCEDURAL HISTORY

On March 13, 2017, Plaintiffs, Dorothy Rivera, Eddy Omar Rivera, and Steven Camburn, filed a Declaratory Judgment action in the Court of Common Pleas for Montgomery County seeking a determination that the Borough's rental-inspection ordinance (Chapter 11, Housing, § 201 *et seq.*) is unconstitutional pursuant to Article I, Section 8 of the Pennsylvania Constitution. (Doc. #0). On April 5, 2017, an Answer with New Matter was filed on behalf of the Borough and Keith Place, Director of Licensing and Inspections. (Doc. #13). On April 25, 2017, Plaintiffs filed an Answer to New Matter. (Doc. #16).

On July 26, 2017, pursuant to a Stipulation among the parties, Plaintiffs filed an Amended Complaint adding factual allegations and Plaintiffs Thomas O'Connor, Kathleen O'Connor and Rosemarie O'Connor. (Doc. #20). The Pottstown Defendants now file these

timely Preliminary Objections to Plaintiffs' Amended Complaint.

IV. STATEMENT OF FACTS

A. The Borough of Pottstown Ordinance.

The Borough has lawfully promulgated and adopted "The Code of Ordinances, Borough of Pottstown," (hereinafter the "Ordinance"), which includes, but is not limited to Chapter 5, Code Enforcement and Chapter 11, Housing. (*See* Amended Complaint, ¶ 12; Pottstown Borough Ordinances, Exhibit A). The purpose of the Ordinance is to "protect and promote the public health, safety, and welfare of its citizens, to establish rights and obligations to owners and occupants relating to residential rental units in the Borough and to encourage owners and occupants to maintain and improve the quality of life and quality of rental housing within the community." (*See* Exhibit A, § 11-201(1)). The Ordinance "provides for a systematic inspection program, registration and licensing of residential rental units and penalties." (*See* Amended Complaint, ¶ 41).

All residential rental units in the Borough are subject to registration, licensing, and a systematic inspection for lawful rentals to third parties and occupancy by third parties unless the residential rental unit is exempt from the licensing provisions. (*See* Exhibit A, §§ 11-201, *et seq.*, 5-701, *et seq.*, and 5-801, *et seq.*). An owner shall permit an inspection by the Borough's Licensing and Inspections Officer at a reasonable time with reasonable notice. If the owner does not permit such inspection, an application for administrative search warrant is permitted. (*See* Amended Complaint, ¶ 45; Exhibit A, § 11-203(I)(3)). Failure to comply with the biennial inspection may also result in the suspension and revocation of the residential license. (*See* Exhibit A, §§ 11-206).

B. Plaintiffs Camburn and Rivera.

Plaintiff Steven Camburn owns and operates rental properties in the Borough of Pottstown, including the property located at 326 Jefferson Avenue, Pottstown, Pennsylvania. (See Amended Complaint, ¶¶ 4-5. See also Exhibit A, §§ 5-701, *et seq.*, and 5-801, *et seq.*). Plaintiffs Dorothy Rivera and Eddy Omar Rivera, h/w, live in and rent the Jefferson Avenue property from Plaintiff owner Camburn. (See Amended Complaint, ¶¶ 4-5). In accordance with the Pottstown Ordinance, the Jefferson Avenue property was to be inspected on March 13, 2017 at 11:00 a.m., for which with notice was provided. (See Amended Complaint, ¶¶ 18-19). On March 8, 2017, five (5) days before the scheduled inspection, Camburn and tenants Rivera wrote to the Borough objecting to a voluntary inspection, requesting that a warrant to inspect be obtained. (See Amended Complaint, ¶ 20).

On March 13, 2017, the Borough applied for and was issued an administrative warrant to inspect the Jefferson Avenue property by Magistrate Judge Scott T. Pallidino. (See Amended Complaint, ¶ 21). On the same date, the Magisterial District Court stayed the execution of the administrative warrant. (See Amended Complaint, ¶ 22).

C. Plaintiffs O'Connor.

Plaintiff Thomas O'Connor owns the property located at 466 N. Franklin Street, Pottstown, Pennsylvania. (See Amended Complaint, ¶ 31). His daughters, Plaintiffs Kathleen and Rosemarie O'Connor reside at Franklin Street. *Id.* On March 3, 2017, the Borough informed Plaintiff O'Connor that the Franklin Street property was due for an inspection pursuant to the Borough Ordinance and proposed the inspection occur on April 10, 2017, which was rescheduled for July 6, 2017. (See Amended Complaint, ¶¶ 34-38) On June 30, 2017, the O'Connors objected to a voluntary inspection without a warrant and informed the Pottstown

Defendants of their intent to join this litigation. (*See* Amended Complaint, ¶ 39).

V. STANDARD OF REVIEW

A preliminary objection in the nature of a demurrer tests the legal sufficiency of the complaint. Pa.R.C.P. 1028(a)(4); *Local No. 163, Int'l Union of United Brewery, Flour, Cereal, Soft Drink & Distillery Workers of Amer. v. Watkins*, 207 A.2d 776, 778 (Pa. 1965). When reviewing preliminary objections the Court must confine its analysis to the pleadings and must accept as true all well-pleaded facts provided in the complaint, and any reasonable inferences that may be drawn from those facts. *Reardon v. Allegheny College*, 926 A.2d 477, 480 (Pa. Super. 2007). However, the Court may take judicial notice of public documents in ruling on Preliminary Objections in the nature of a demurrer. *Solomon v. U.S. Healthcare Systems of Pennsylvania, Inc.*, 797 A.2d 346, 352 (Pa. Super. 2002). The Court will not accept as true conclusions of law, unwarranted inferences from the facts, argumentative allegations, or expressions of opinion. *Penn Title Ins. Co. v. Deshler*, 661 A.2d 481, 483 (Pa. Cmwlth. 1995).

The issues raised in this Declaratory Judgment action are of a legal nature and seek to declare that the subsequent Ordinance violates the Pennsylvania Constitution. Defendants are entitled to a demurrer as Plaintiffs' claims, as a matter of law, are legally deficient.

VI. LEGAL ARGUMENT

Plaintiffs allege that the rental-inspection requirement of the Ordinance violates Article I, Section 8 of the Pennsylvania Constitution because administrative warrants should be subject to traditional warrant standards. (*See* Amended Complaint) Plaintiffs contend that the Pennsylvania Constitution provides a higher level of protection against unreasonable government searches than the Fourth Amendment of the United States Constitution. *Id.* at ¶ 76.

Importantly, Plaintiffs do not challenge the legitimacy or the validity of the purpose of

the Ordinance. There are no allegations that the adoption of the Ordinance, on its face, was improper. Plaintiffs also do not assert discriminatory enforcement. Rather, Plaintiffs allege that the substance of the Ordinance permitting administrative warrants on less than traditional probable cause is violative of the Pennsylvania Constitution. Plaintiffs' claim is without merit because the Ordinance is a permitted use of the Borough's police power and provides adequate constitutional safeguards against illegal searches under both the federal and Pennsylvania Constitutions. Accordingly, the Pottstown Defendants are entitled to a demurrer, and the Preliminary Objections should be sustained as a matter of law, with prejudice.

A. Preliminary Objection - Demurrer (Pa.R.Civ.P. 1028(a)(4)): The Ordinance is a Constitutional and Permitted Use of the Borough's Power.

This case requires the Court to focus its attention on the use of valid police powers by a municipality. The right of a municipality to regulate residential rental dwellings is well established. *McSwain v. Commonwealth*, 520 A.2d 527, 529 (Pa. Cmwlth. 1987), *alloc. den.*, 535 A.2d 1058 (Pa. 1989) (citing *City of El Paso v. Simmon*, 379 U.S. 497 (1965)). An ordinance that provides for a system of inspections and renewal of occupancy licenses to protect and promote the public health, safety and welfare is within a municipality's police power subject to rational basis review. *Berwick Area Landlord Ass'n v. Borough of Berwick*, 48 A.3d 524, 538 (Pa. Cmwlth. 2012).

Here, the subject Ordinance also provides for occupancy licenses and inspections, a reasonable exercise of Pottstown's police powers. (See Exhibit A, § 11-201(1)). The power of a municipality to act in the area of health and safety through its police powers is as comprehensive as the demands of society require and the least limitable of their powers. *National Wood Preservers, Inc. v. Commonwealth*, 414 A.2d 37 (Pa.), *app. den.*, 449 U.S. 803 (1980). As such, a municipality, like Pottstown, has wide discretion in determining what is and is not necessary to

protect the community and promote the well-being of its citizens. *McSwain, supra*, 520 A.2d at 529.

The exercise of a government's police powers is rationally related to protect the interests of the public generally, and the means are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals. *Com. v. Barnes & Tucker Co.*, 371 A.2d 461, 465 (Pa.), *app. diss.*, 434 U.S. 807 (1977). In the present case, in enacting the subject Ordinance requiring mandatory biennial inspections of rental properties, Pottstown has furthered a legitimate public interest in ensuring the habitability of property rented to the public in its municipality that meets the rational basis standard. (*See* Exhibit A, § 11-201).

A municipal ordinance is presumptively valid and it is to be presumed that municipal officials acted in good faith in passing the ordinance. *Com. v. Winfree*, 408 Pa. 128, 134, 182 A.2d 698 (1962); *Com. v. Campbell*, No. 1962 C.D. 2013, 2014 WL 3537956, at *2 (Pa. Cmwlth. July 17, 2014); *Crews v. City of Chester*, 35 A.3d 1267, 1270 (Pa. Cmwlth. 2012).

Additionally, an ordinance must be construed, if possible, to give effect to all of its provisions. In interpreting an ordinance, a particular section or subdivision must be read as an integral part of the whole, and not as a separate portion with an independent meaning. *Fidler v. Zoning Board of Adjustment*, 182 A.2d 692 (Pa. 1962). The court is obligated to adopt a reasonable construction which will save the constitutionality of an ordinance. *Atlantic-Inland, Inc. v. West Goshen T.P.*, 410 A.2d 380, 382 (Pa. Cmwlth. 1980). An ordinance may not be held to be facially unconstitutional unless every reasonable interpretation of the ordinance would be unconstitutional. *Lock Haven Property Owners Ass'n v. Lock Haven*, 911 F.Supp. 155 (M.D. Pa. 1995).

In this case, a careful reading of the Ordinance, and particularly Chapter 11, in

conjunction with the general provisions of the Property Maintenance Code, (Exhibit A, § 301, *et seq.*), reflects that the Ordinance provides adequate protections against unreasonable searches. Plaintiffs allege that traditional probable cause is necessary for an administrative search warrant, arguing for an independent judicial determination that the Borough has individualized probable cause to search their private property. (*See* Amended Complaint, ¶ 78). Administrative warrants are not intended for seizure of criminal evidence, but merely for inspection of homes or businesses to ensure compliance with health and safety codes. *Com. v. Tobin*, 828 A.2d 415, 419 (Pa. Cmwlth. 2003). Consequently, the Commonwealth Court, in *Tobin, supra*, concluded that an administrative search warrant does not require as high a level of probable cause as a criminal search warrant. *Id.* at 423.

In *Tobin*, the Commonwealth Court cites *Camara v. Municipal Ct. of the City and Cty. of San Francisco*, 387 U.S. 523 (1967) with approval, observing:

[Camara] reasoned that because an agency's decision to conduct an area inspection is based on conditions in the area as a whole, the "criminal" probable cause standard asserted by the appellant was unworkable and would result in area inspections being eliminated, dealing a "crushing blow" to the goals of code enforcement. Relying on the long history of judicial and public acceptance of inspection programs, the public interest in preventing and abating dangerous conditions, and the impersonal nature of the search, which does not seek to "discover a crime," it held, as we noted earlier in this opinion, that probable cause to issue an administrative search warrant exists if "reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling." We too, must determine "probable cause" within this context.

828 A.2d at 423 (emphasis added).

As seen, Pennsylvania courts rely upon the sound reasoning in *Camara* when interpreting the Pennsylvania Constitution. While under certain circumstances, the "[Pennsylvania] constitution provides greater protection than the Fourth Amendment," *Com. v. Moore*, 928 A.2d

1092, 1099–101 (Pa. Super. 2007); *Com. v. Hoak*, 700 A.2d 1263, 1266 (Pa. Super. 1997) (*en banc*), *affirmed*, 734 A.2d 1275 (Pa. 1999), the Pennsylvania Supreme Court has offered clear guidance in the context of a “greater protections” state constitutional analysis. Courts are to construe the Pennsylvania Constitution as providing greater rights to its citizens than the federal constitution **only where there is a compelling reason** to do so. *Moore, supra*, 928 A.2d at 1101 (emphasis added).

Guided by these standards, Plaintiffs’ allegations that the Ordinance does not provide adequate safeguards against unreasonable searches is without merit. First, the Ordinance is presumed constitutional. *Winfree, supra*. Second, it is a reasonable legislative or administrative plan derived from neutral sources. *Tobin, supra*, 828 A.2d at 423. The subject Ordinance protects public health and safety by requiring owners of residential rental properties to meet minimal habitability standards and to keep their properties in good and safe condition. To ensure compliance with these regulations, the Ordinance authorizes code enforcement officials to enter residences at reasonable times to inspect, subject to constitutional restrictions on unreasonable searches and seizures, by requiring a warrant when there is no voluntary consent to search. (*See* Amended Complaint, ¶ 45; Exhibit A, § 11-203(I)(3)). The administrative warrant(s) at issue also articulates a reasonable relationship between the subject Ordinance and the location of the search, *i.e.*, Plaintiffs’ residential rental properties. Finally, the need to inspect these properties far outweighs the negligible invasion of Plaintiffs’ privacy caused by the inspection. *Tobin*, 828 A.2d at 420 (reasonableness of administrative search is assessed by balancing need to search against level of invasion the search entails).

Because the Amended Complaint fails to allege sufficient facts to declare Pottstown’s Ordinance unconstitutional, the Pottstown Defendants are entitled to a demurrer pursuant to

Pa.R.Civ.P. 1028(a)(4), and the Preliminary Objection should be sustained, with prejudice.

B. Preliminary Objection - Demurrer Pursuant to Pa.R.Civ.P. 1028(a)(4): The Ordinance Does Not Violate Article I, Section 8 of the Pennsylvania Constitution.

Plaintiffs seek a determination that the Pottstown Ordinance is unconstitutional pursuant to the Pennsylvania Constitution requiring a stringent standard of probable cause. (*See* Amended Complaint). However, the facts alleged by Plaintiffs, along with the text of the Ordinance itself, demonstrate that the Ordinance *does not* permit illegal searches of rental properties because a warrant is required for non-consensual searches. (Exhibit B, § 11-203(I)(3)).

When reviewing whether the Pennsylvania Constitution confers more rights than its federal counterpart, courts must examine: (1) the text of the Pennsylvania constitutional provision; (2) the history of the provision, including Pennsylvania case law; (3) related case law from other states; and (4) policy considerations, including unique issues of state and local concern, and applicability within modern Pennsylvania jurisprudence. *Com. v. Crouse*, 729 A.2d 588, 594 (Pa. Super. 1999), *appeal denied*, 747 A.2d 364 (Pa. 1999) (*citing Com. v. Edmunds*, 586 A.2d 887, 895 (Pa. 1991)). An analysis of these factors supports the constitutionality of the Ordinance and the lesser probable cause standard to obtain an administrative warrant.

1. Article 1, Section 8 of the Pennsylvania Constitution.

Article 1, Section 8 of the Pennsylvania Constitution provides:

The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

PA. CONST. art. I, § 8. Although the protections against unreasonable searches and seizures in the Pennsylvania Constitution predate those contained in the United States Constitution, the

guarantees under the Fourth Amendment of the United States Constitution are similar.¹ *Edmunds, supra*. Accordingly, this factor does not provide a compelling reason for this Court to declare the Pottstown Ordinance provision unconstitutional.

2. The History of Article 1, Section 8.

The next factor to consider in interpreting the Pennsylvania Constitution is the history of Article 1, Section 8. The requirement of probable cause in Pennsylvania traces its origin to its original Constitution of 1776. *Edmunds*, 586 A.2d at 394. The “constitutional protection against unreasonable searches and seizures existed in Pennsylvania more than a decade before the adoption of the federal constitution, and fifteen years prior to the promulgation of the Fourth Amendment.” *Com. v. Sell*, 470 A.2d 457, 466 (Pa. 1983). As explained by the Pennsylvania Supreme Court, the language of Article 1, Section 8 remains nearly identical to the language drafted over 200 years ago and “embod[ies] a strong notion of privacy, carefully safeguarded in this Commonwealth” *Edmunds*, 586 A.2d at 394.

No Pennsylvania court has squarely addressed the validity of administrative warrants pursuant to the Pennsylvania Constitution. However, the Commonwealth Court has provided several instructive cases that support the constitutionality of the Pottstown’s inspection (and warrant) provisions. On each occasion, the health, welfare and safety of citizens was favored over the landlord’s rights. For example, the Commonwealth Court in *Tobin*, although a Fourth Amendment analysis, provided:

¹ The Fourth Amendment states:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

These administrative warrants “may but do not necessarily have to be issued by courts” They may be issued by neutral magistrates or neutral officers. While probable cause is required for both types of warrants, for the administrative search warrant, probable cause exists if “reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling.” Relevant factors for evaluating probable cause are the passage of time since a prior inspection, the condition of the premises, and the condition of the general area. Another basis for finding probable cause to support the issuance of an administrative search warrant is the presence of a general administrative plan for enforcement of the ordinance, which is “derived from neutral sources.”

Com. v. Tobin, supra, at 419-20 (citations omitted).

In *Simpson v. City of New Castle*, the Commonwealth Court opined that “because Section PM-105.3 imposes on code officials the requirement to inspect subject to constitutional restrictions, it is adequate protection against unreasonable searches and seizures as protected by the Fourth Amendment to the United States Constitution and Article One, Section Eight of the Pennsylvania Constitution. As such, Landlord’s claim is without merit.” 740 A.2d 287, 291 (Pa. Cmwlth. 1999).

Finally, in *Green Acres Apts., Inc. v. Bristol Twp.*, the Commonwealth Court found that

The Appellant additionally argues that the ordinance is unconstitutional and invalid as violative of state and federal constitutional guarantees protecting against illegal searches, seizures, and self incrimination. It notes that Section 11 of the ordinance provides that a Building Officer who has been unable to obtain consent to enter a unit and conduct an inspection may apply to a Justice of the Peace for a warrant to inspect any such units if he has reason to believe, based upon a complaint, that a violation exists therein. He may also obtain a warrant for such entry and inspection where he asserts that the inspection is sought due to the lapse of time since the last inspection or because of conditions in the general area within which the premises are located. We agree with the court below that these warrant provisions contradict the Appellant’s search and seizure contentions.

482 A.2d 1356, 1359-60 (Pa. Cmwlth. 1984) (citations omitted).

The *Simpson* decision specifically provided that because the ordinance also imposed a requirement on code officials to inspect subject to constitutional restrictions there was adequate protection against unreasonable searches and seizures pursuant to *Article 1, Section 8 of the Pennsylvania Constitution* as well as the Fourth Amendment. *Id.* at 291 (emphasis added). Simply, the history of related case law provides that administrative warrants may be issued on a lesser basis than traditional probable cause for reasonable legislative or administrative standards, derived from neutral sources. Therefore, a stricter probable cause standard does not apply and the Ordinance is not violative of Article 1, Section 8 of the Pennsylvania Constitution.

3. Related Case Law from other States.

The next factor to consider in interpreting the Pennsylvania Constitution is caselaw from other jurisdictions. Although no state high court has squarely addressed whether its state constitution requires administrative warrants be supported by individualized probable cause, several state courts have considered whether administrative warrants demand the same level of probable cause as criminal warrants. *See, e.g., State v. Carter*, 733 N.W.2d 333, 337 (Iowa 2007) (finding that administrative search warrant does **not** require the probable cause necessary for a criminal warrant); *Florida Dept. of Agriculture and Consumer Services v. Haire*, 836 So.2d 1040, 1058 (Fl. App. 4 Dist. 2003) (finding “**relaxed**” probable cause evaluation in administrative search situations); *People v. Weems*, 2004 WL 2526429, *3 (Cal. App. 2 Dist. 2004) (finding **lesser showing** of cause to obtain administrative warrant than criminal search warrant because less hostile intrusion than the search for fruits and instrumentalities of crime). Accordingly, this factor does not provide a compelling reason for this Court to declare the Pottstown Ordinance unconstitutional.

4. Policy Considerations.

Finally, courts are to take into account policy considerations in interpreting Article 1, Section 8. As detailed previously, the Borough's police powers permit it to promote the health, morals or safety and the general well-being of the community. *Adams Sanitation Co., Inc. v. Com. Dept. of Environmental Protection*, 715 A.2d 390 (Pa. 1998). A routine inspection of the physical condition of private property is minimal intrusion compared to the typical police officer's search for the fruits and instrumentalities of crime. *Tobin, supra*. The warrant procedure in the subject Ordinance requires that a decision to search private property without consent is justified by a reasonable governmental interest. (Exhibit B, § 11-203(I)(3)). Reasonableness is the ultimate standard and a search of private property without proper consent is unreasonable unless it has been authorized by a valid search warrant. *Camara*, 387 U.S. at 528-29. However, if a valid public interest, such as the health and safety of the community, justifies the intrusion contemplated, then there is probable cause to issue a suitably restricted search warrant. *Tobin, supra*. Accordingly, this factor does not provide a compelling reason for this Court to declare the Pottstown Ordinance unconstitutional.

C. Preliminary Objection- Demurrer Pursuant to Pa.R.Civ.P. 1028(a)(4): Dismissal of Keith Place—Official Capacity.

Plaintiffs have brought this action against Defendant Place only in his official capacity as the Director of Pottstown's Licensing and Inspections Department. (Amended Complaint, at ¶ 9). Importantly, Plaintiffs make no specific factual allegations against Defendant Place with regard to his role in the enactment or approval of the Ordinance or the implementation or enforcement of the rental inspection elements of the Ordinance. *Id.* Indeed, the Declaratory Judgment claim alleging that the Borough's Ordinance violates the Pennsylvania Constitution is asserted against the Borough, not Defendant Place. (Amended Complaint). Therefore, all

Preliminary Objections as to Mr. Place must be sustained as a matter of law.

Furthermore, as reflected in the Amended Complaint, Mr. Place's involvement in this matter solely arises out of his status as Director of the Licensing and Inspections Department, and is entitled to official immunity from Plaintiff's claims. *See* 42 Pa.C.S. § 8545. Pursuant to the Pennsylvania Tort Claims Act, "[a]n employee of a local agency is liable for civil damages on account of any injury ... caused by acts of the employee which are within the scope of his office or duties only to the same extent as his employing local agency..." *Id.* In other words, this litigation is more appropriately directed at the Borough and **not** Mr. Place. Accordingly, Defendant Place is entitled to a demurrer based on official immunity. *See* Pa.R.Civ.P. 1028(a)(4).

V. CONCLUSION

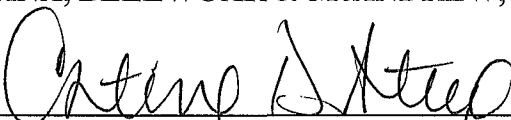
For the reasons set forth herein, the Pottstown Defendants' Preliminary Objections pursuant to Rule 1028(a)(4) should be sustained, and the Amended Complaint be dismissed as a matter of law, with prejudice.

Respectfully Submitted,

SIANA, BELLWOAR & McANDREW, LLP

Date: August 15, 2017

By:



Sheryl L. Brown, Esquire, I.D. # 59313

Christine D. Steere, Esquire, I.D. #84066

Attorneys for Defendants,

Pottstown of Pottstown and Keith A. Place

941 Pottstown Pike, Suite 200

Chester Springs, PA 19425

(P): 610.321.5500 (F): 610.321.0505

slbrown@sianalaw.com

cdsteere@sianalaw.com

EXHIBIT A

Chapter 5. Code Enforcement

PART 3. INTERNATIONAL PROPERTY MAINTENANCE CODE

§ 301. Adoption of Code.

[Ord. 2019, 4/10/2006; as amended by Ord. 2159, 12/12/2016]

A certain document, three copies of which are on file in the office of the Licensing and Inspections Director of the Borough of Pottstown, being marked and designated as the "International Property Maintenance Code, 2009 Edition," as published by the International Code Council, be and is hereby adopted as the Property Maintenance Code of the Borough of Pottstown, in the State of Pennsylvania, for regulating and governing the conditions and maintenance of all property, buildings and structures; providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use, and the condemnation of buildings and structures unfit for human occupancy and use, and the demolition of such existing structures as herein provided; providing for the issuance of permits and collection of fees therefor; and each and all of the regulations, provisions, penalties, conditions and terms of said Property Maintenance Code on file in the offices of the Borough of Pottstown are hereby referred to, adopted, and made a part hereof as if fully set out in this Part, with the additions, insertions, deletions and changes prescribed in § 302 of this Part.

§ 302. Revisions to Code.

[Ord. 2019, 4/10/2006]

The following sections are hereby revised:

- A. Section 101.1: Borough of Pottstown.
- B. Section 103.5: Comprehensive Fee Resolution.
- C. Section 304.14: March 1 to November 15.
- D. Section 602.3: September 15 to May 15.
- E. Section 602.4: September 15 to May 15.
- F. The following Section 302.8 is hereby amended to read as follows:

Section 302.8. Except as provided in other regulations, no inoperative, unregistered, uninspected, or unlicensed motor vehicle shall be parked, kept, or stored on any premises, and no such vehicle shall, at any time, be in a state of major disassembly for a period in excess of 30 days, or disrepair, or in the process of being stripped or dismantled. Painting of vehicles is prohibited unless conducted inside an approved spray booth.

EXCEPTION - A vehicle of any type is permitted to undergo major overhaul, including body work, provided that such work is performed inside a structure or similarly enclosed area designed and approved for such purposes.

§ 303. Additions to Code.

1. A new Section 112 shall be created and provide as follows:

Section 112. Property Transfer Use and Occupancy Certificate.

Section 112.1. Single-Family Owner-Occupied Dwelling Requirements. Upon transfer of title to a new owner, or upon said building becoming vacant, no single-family dwelling shall be occupied, in whole or in part, until the issuance of a certificate by the Code Enforcement Officer. The following requirements must be met before a certificate shall be issued:

- 112.1.1. A fire extinguisher equipped with 2 1/2 pounds ABC drypowder rating must be supplied for the dwelling mounted in the kitchen on the wall near the exit doorway.
- 112.1.2. All kitchens, bathrooms, powder rooms and laundry rooms, or any garage and exterior outlets within six feet of a water source, must be supplied with a ground-fault receptacle.
- 112.1.3. All gas ranges must be supplied with shutoff valves installed behind the range.
- 112.1.4. All electrical ranges must have an outlet installed at the rear of the range.
- 112.1.5. The property must be in a clean, safe and sanitary condition.
- 112.1.6. Before the issuance of the property transfer use and occupancy certificate, a full buyer notification inspection shall be conducted. The old owner must inform the new owner of all pending violations and a letter of intent shall be signed by the buyer or new owner. All violations must be corrected within 60 days upon transfer of the title to the new owner.
- 112.1.7. Upon failure of a property transfer to a new owner, all listed violations shall be corrected within 60 days by the present owner. Failure to abate said violations shall be subject to the penalties set forth in Section PM106.4.
- 112.1.8. Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between garages and residences shall be equipped with solid wood doors, not less than one and three-eighths inches in thickness, solid or honeycomb core steel doors not less than one and three eighths inches thick, or twenty-minute fire-rated doors.

Section 112.2. Single-Family, Two-Family and Multifamily Dwelling Units. Upon transfer of title to a new owner, no single-family rental unit, no two-family dwelling and no multiple dwelling shall be occupied, in whole or in part, until the issuance of a property transfer certificate of occupancy by the Code Enforcement Officer that said structure conforms in all respects to the requirements of this code. The following requirements must be met before a property transfer certificate of use and occupancy shall be issued:

- 112.2.1. Before the issuance of the said certificate of occupancy, a full code compliance inspection shall be conducted. The old owner must inform the new owner of all pending violations, and a letter of intent shall be signed by the buyer or new owner and all violations must be corrected within 60 days upon transfer of the title to the new owner.
- 112.2.2. Upon failure of a property transfer to a new owner, all listed violations shall be corrected within 60 days by the present owner. Failure to abate said violations shall be subject to the penalties set forth in Section PM106.4.
- 112.2.3. All hazardous building, safety, fire, plumbing and electrical violations cited at the time of inspection by the Code Enforcement Officer shall be corrected in the time specified by the Code Inspector.
- 112.2.4. If the dwelling unit is serviced by an individual water supply, the water supply shall be terminated and the dwelling unit shall be connected to the available public water main as required in Part 4 of this chapter, adopting the International Plumbing Code (2009 Edition).

Section 112.3. Commercial, Office, Manufacturing and Industrial Buildings. Upon transfer of title to a new owner, no commercial, office, manufacturing or industrial building shall be occupied, in whole or in part, until the issuance of a property transfer certificate of occupancy by the Code Enforcement Officer that said structure conforms in all respects to the requirements of this code, the Property Maintenance Code, the Fire Prevention Code and the Plumbing Code, and Chapter 27, Zoning, of the Pottstown Borough Code of Ordinances. The following requirements must be met before a property transfer certificate of use and occupancy shall be issued:

Section 112.3.1. Before the issuance of the said certificate of occupancy, a full code compliance inspection shall be conducted. The old owner must inform the new owner of all pending violations, and a letter of intent shall be signed by the buyer or new owner, who will be responsible for the correction of the violations, which must occur within 60 days of transfer of the deed to the new owner.

Section 112.3.2. In the event that the property transfer does not occur, the present owner must correct all listed violations within 60 days of the date on which the settlement on the property was to have occurred. Failure to abate the listed violations shall subject the present owner to the penalties set forth in this code and as prescribed by the Code of Ordinances of the Borough of Pottstown.

Section 112.3.3. All hazardous building, safety, fire, plumbing and electrical violations cited at the time of inspection by the Code Enforcement Officer shall be corrected in the time specified by the Code Inspector.

Section 112.4. Fees. The fee paid to the Borough of Pottstown for the residential housing inspection for each residential housing unit shall be \$65 for each unit, and the fee to be paid for commercial, office, manufacturing and industrial inspection shall be the actual amount incurred by the Borough for the inspection of any unit. These fees may be changed from time to time by resolution of the Borough Council.

Section 112.5. Caretaker. In every multiple dwelling in which the owner does not reside, there shall be a responsible person, designated by the owner, residing on the premises whose duties, include maintaining the commonly used parts of the premises.

Section 112.6. Trash Collection. No trash or garbage is to be set out for collection prior to 4:00 p.m. the night before the scheduled pickup. All receptacles for the collection of garbage and/or trash shall be removed from the curb of the various streets adjacent to the property where the trash/garbage is accumulated prior to 6:00 p.m. on the day of the actual pickup.

Section 112.7. Residential Rental Units. All residential rental units shall require a biennial inspection for code compliance pursuant to the requirements of § 801 of Part 8 of Chapter 5 of the Pottstown Borough Code of Ordinances, as amended.

Section 112.8. Commercial, Office, Manufacturing and Industrial Units. All commercial, office, manufacturing and industrial units that become vacant or have a change of occupant must be inspected for code compliance prior to reoccupancy of the said unit. It is the responsibility of the owner or the owner's agent to arrange for such inspection. Prior to reoccupancy of the said unit, all code violations must be corrected and a rental license must be issued.

Section 112.9. Delinquent Water, Sewer, Waste Collection and Disposal Bills for All Rental Units to be Paid. All outstanding bills for water, sewer and waste collection and disposal, and clean and lien services, for any residential, commercial, office, manufacturing and industrial rental unit, that are more than 30 days' delinquent shall be paid in full prior to the issuance of a rental license.

Section 112.10. Short-Term Rental Units. All rooming houses, hotels, motels, bed-and-breakfasts or similar facilities that house people, property or business on a short-term basis where different people occupy a unit for a period of time of one month or less shall be inspected for code compliance once a year, unless such unit is exempt pursuant to § 204 of Chapter 11. It is the responsibility of the owner or the owner's agent to arrange for such inspection and to pay the fee therefor, which fee shall be established from time to time by resolution of the Borough Council. An annual license shall be issued for the short-term rental facility, provided that a minimum of 75% of the individual units comply with all Borough codes. Certificates of occupancy will be issued for individual units, and any individual unit that does not comply with all Borough codes will not receive a certificate of occupancy and shall not be occupied until all code violations have been corrected and a certificate of occupancy has been issued.

Section 112.11. Absentee Landlords to Designate Authorized Agent. All owners of rental property (landlords) who do not reside in Montgomery County, Chester County or Berks County, Pennsylvania, shall designate, in writing, an authorized agent, who resides within one of the three aforesaid counties, who shall be responsible for receiving all notices issued by the Borough pertaining to the rental property. The landlord shall also provide, in writing, the business address and telephone number of the person or entity that the landlord designates as its authorized agent.

Section 112.12. Sanitation. All exterior property and premises shall be maintained clean, safe, sanitary and free from any accumulation of rubbish or garbage. Interior-type furniture which would be adversely affected by the elements and/or susceptible to fire and/or infestation by insects, rats or other vermin is

prohibited from being placed outside of structures. Such prohibited furniture shall include but not be limited to upholstered couches and chairs or other fabric-covered articles not designed or intended for exterior use. When the Code Enforcement Officer determines that prohibited or abandoned furniture is located in an exterior property area, the Code Enforcement Officer shall cause the owner or other responsible person to be notified in accordance with § 215 of Chapter 1, Administration and Government, of this Code. If the prohibited or abandoned furniture is not removed within the time frame set forth in the notice, the Borough may cause the abandoned or prohibited furniture to be removed and the owner to be billed for the cost thereof in accordance with the provisions of this Code. If the cost of removal is not paid within 15 days, the Borough may impose a lien for the cost of said removal in a manner provided by law.

2. Section 304.3, Premises Identification, of Section 304, Exterior Structure, of Chapter 3, General Requirements, of the International Property Maintenance Code, 2009 Edition, is modified to read as follows:
[Added by Ord. 2107, 2/11/2013]

304.3 Premises Identification. Buildings shall have approved address numbers placed in a position to be plainly legible and visible from the street or road fronting the property and to the rear of properties visible from alleys and half streets. These numbers shall contrast with their background. Address numbers shall be arabic numerals or alphabet letters. Numbers shall be a minimum of four inches high with a minimum stroke width of 0.5 inch.

§ 304. Repealer.

[Ord. 2019, 4/10/2006]

All ordinances or parts of Ordinances, including but not limited to Part 3, BOCA National Property Maintenance Code, of Chapter 5, Code Enforcement, of the Code of Ordinances of the Borough of Pottstown, as amended, which shall be inconsistent with the Part shall be and the same expressly are repealed.

§ 305. Construal of Provisions.

[Ord. 2019, 4/10/2006]

Nothing in this Part or in the Property Maintenance Code hereby adopted shall be construed to affect any suit or proceeding impending in any court or any rights acquired or liability incurred or any cause or causes of action acquired or existing under any act or ordinance hereby repealed as cited in § 304 of this Part, nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Part.

§ 306. Future Editions.

[Ord. 2019, 4/10/2006; as amended by Ord. 2159, 12/12/2016]

It is the intent of the Burgess and Town Council of the Borough of Pottstown to adopt the 2009 Edition of the International Property Maintenance Code. However, in the event that the State of Pennsylvania prepares and adopts a later version as amended and modified by the Pennsylvania Uniform Construction Code (Act 45), 34 Pennsylvania Code Part XIV, that most recent tri-annual edition of the International Property Maintenance Code that is in equivalent cycle with the adopted UCC will become the most recent edition of the International Property Maintenance Code and shall become part of the Code of Ordinances of the Borough of Pottstown without the need for the adoption of any future amending ordinance.

§ 307. When Effective.

[Ord. 2019, 4/10/2006]

This Part and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take effect and be in full force and effect immediately upon enactment.

Chapter 5. Code Enforcement

Part 7. RESIDENTIAL RENTAL REGISTRATION

§ 701. Residential Rental Registration Required.

[Ord. 1944, 8/12/2002, § 5; as amended by Ord. 2137, 6/8/2015]

The owner(s) of each residential rental property shall register the rental property with the Department of Licensing and Inspections on or before June 30, 2003. There shall be no rental registration fee for rental property registered prior to February 28, 2003. Rental registration fees for properties subsequent to February 28, 2003, shall be established by Borough Council, from time to time, by resolution. For newly created residential rental units, registration shall occur prior to any occupancy.

§ 702. Information to Be Provided.

[Ord. 1944, 8/12/2002, § 5; as amended by Ord. 2137, 6/8/2015]

Registration forms shall be available in the Department of Licensing and Inspections. Information required to be submitted shall include, but not be limited to, the following:

- A. Name, address and telephone number of the property owner.
- B. Address and location of the residential rental unit or units.
- C. Name, address and telephone number of the rental agent (if applicable).
- D. Number of residential rental units located in the residential rental property.
- E. Identification and description of each residential rental unit.
- F. Additional information deemed necessary by the Director of Licensing and Inspections to administer the registration process.

§ 703. Registration Effectuated; Frequency of Registration.

[Ord. 1944, 8/12/2002, § 5; as amended by Ord. 2137, 6/8/2015]

1. Registration shall be deemed complete when the owner has submitted the information required in § 702 above to the Department of Licensing and Inspections; a Certification of Registration shall be issued by the Department of Licensing and Inspections evidencing said registration of all residential rental units contained in the residential rental property.
2. Once a residential rental property is registered with the Department of Licensing and Inspections, subsequent registration is required when there is a change to the number of residential rental units within a residential rental property.

§ 704. Effective Date.

[Ord. 1944, 8/12/2002, § 5]
This Part shall become effective October 1, 2002.

Chapter 5. Code Enforcement

PART 8. RESIDENTIAL RENTAL LICENSING

§ 801. Residential Rental License Required for Residential Rental Units.

[Ord. 1944, 8/12/2002, § 6; as amended by Ord. 2078, 10/12/2010, § 8; and by Ord. 2137, 6/8/2015]

A residential rental license, as more specifically defined and described in Part 2, Registration and Licensing of Residential Rental Units, of Chapter 11, Housing, shall be required for each residential rental unit biennially (at least once every 24 months), unless the residential rental unit is exempt as defined in § 204 of Chapter 11 or is a short-term rental unit.^[1] Short-term residential rental units shall continue to require an annual inspection.

- A. For licensing purposes, the Licensing and Inspections Officer shall fully inspect each residential rental unit biennially, upon a property transfer, upon a complaint that a violation has occurred, or where the Licensing and Inspections Officer has reasonable cause to believe that a violation is occurring.
- B. Prior to initial occupancy of newly constructed or newly created or substantially rehabilitated residential rental units, the owner, operator, responsible agent or manager of each residential rental unit shall register with and make application to the Licensing and Inspections Officer for a residential rental license as herein provided. Such unit will be exempt from further inspection, unless a complaint of violation has occurred, or a code enforcement officer has probable cause to believe that a violation has occurred, or in the event of a property transfer. Absent property transfer or complaint of violation, it is the intent of this section to inspect all residential rental units biennially. Initial inspections will occur in accordance with a phased-in systematic inspection program to be prepared and made available upon request by the Department of Licensing and Inspections. The penalty for not allowing an inspection shall be revocation of the residential rental registration and/or the residential rental license.

[1] *Editor's Note: Section 12 of Ord. 2137 provided: "Notwithstanding anything to the contrary contained in this ordinance, the initial cycle for the first biennial inspection will be for a period of 30 months and begin July, 1, 2015, and conclude December 31, 2017. During this 30 months, a change in tenancy in any residential rental unit shall require an inspection of the residential rental unit. Thereafter, the biennial inspection cycle shall commence January 1, 2018, as described in this ordinance and the requirement for an inspection and issuance of a residential rental license on a change in tenancy shall terminate."*

§ 802. Compliance.

[Ord. 1944, 8/12/2002, § 6; as amended by Ord. 2137, 6/8/2015]

If the Licensing and Inspections Officer, upon completion of the inspection, finds that the applicable codes have not been met, a notice of violation shall be issued.

- A. Notices of violation and the procedure for remedial action of said violations will be addressed as set forth in § 215, "Violations and Penalties," of Chapter 1, "Administration and Government," of the Code of Ordinances of the Borough of Pottstown, as amended.
- B. If, after the expiration of the notice provision or any extensions thereof, the second reinspection reveals that all violations have not been corrected, the residential rental registration or the residential rental license for the residential rental unit shall be revoked, and if the residential rental unit is vacant, it shall remain vacant.

- C. A fee will be charged for the initial inspection and for each reinspection after the second reinspection. The Department of Licensing and Inspections shall maintain a list of all residential rental units and their ownership that have been the subject of prosecution before the District Justice during the preceding five years.

§ 803. Issuance of Residential Rental License.

[Ord. 1944, 8/12/2002, § 6; as amended by Ord. 2078, 10/12/2010, § 9]

1. A residential rental license shall be issued if the residential rental unit meets the following conditions:
 - A. The Licensing and Inspections Officer finds that the residential rental unit is in compliance with the applicable codes and satisfies the requirements of § 206 in Part 2 of Chapter 11.
[Amended by Ord. 2137, 6/8/2015]
 - B. The owner, operator or manager provides the name of a designated responsible agent (if applicable).
 - C. The owner, operator, designated responsible agent or manager pays the license inspection and reinspection (if applicable) fee(s).
 - D. The owner, operator, designated responsible agent or manager is current on water, sewer and trash fees, real estate taxes, and any and all clean and lien charges for the residential rental unit.
 - E. The uses of the property are in compliance with the Zoning Ordinance [Chapter 27] of the Borough of Pottstown.
 - F. The owner, operator, designated responsible agent or manager has submitted a complete and accurate tenancy report for each residential rental unit.
 - G. The owner, operator, designated responsible agent or manager has submitted proof of a written rental agreement and proof of general liability insurance for the residential rental unit.
 - H. The owner, operator, designated responsible agent or manager has paid in full any fines and costs arising from enforcement of this Part or any of the ordinances of the Borough of Pottstown relating to land use and/or code enforcement.
2. A residential rental license shall be reissued if the residential rental unit satisfies the conditions in Subsections B through H above and has no open code violations.

§ 804. Revocation of Residential Rental License.

[Ord. 1944, 8/12/2002, § 6; as amended by Ord. 2078, 10/12/2010, § 10; and by Ord. 2137, 6/8/2015]

A residential rental license shall be revoked if the owner or operator of a residential rental unit does not provide the name of the designated responsible agent (if applicable); does not correct code violations found in response to a complaint within the time frame cited by the Licensing and Inspections Officer; is not current on water, sewer and trash fees, real estate taxes, and/or clean and lien charges for the residential rental unit; changes the uses of the property so as to no longer be in compliance with the Zoning Ordinance [Chapter 27] of the Borough of Pottstown; does not submit a complete and accurate occupant listing by residential rental unit by January 31 of each year, whenever appropriate; and/or has not complied with the disruptive conduct provision of this Part, as described in Chapter 11, § 203.3. If the residential rental license is revoked and the residential rental unit is vacant, it shall remain vacant.

§ 805. Reinstatement of Residential License.

[Ord. 1944, 8/12/2002, § 6; as amended by Ord. 2078, 10/12/2010, § 11]

A residential rental license shall be reinstated if the owner or operator of a residential rental unit corrects all the reasons for the revocation of the residential rental license, has paid the license reinstatement fee, and has

provided to the Borough a security deposit in the amount of \$500 to be held by the Borough, for the following twelve-month period, to ensure compliance with all Borough ordinances and to further ensure timely payment of all water, sewer and trash fees, real estate taxes and clean and lien charges. At the conclusion of the twelve-month period, if the owner or operator of the residential rental unit is in compliance with all Borough ordinances and has paid timely all water, sewer, trash fees, real estate taxes, and clean and lien charges, the security deposit shall be refunded to the owner.

§ 806. Sale or Transfer of Residential Rental Unit.

[Ord. 1944, 8/12/2002, § 6]

A residential rental license shall not be transferred. In the case of licensed residential rental units that are sold or transferred, the new owner shall apply for a residential rental license for each residential rental unit and each residential rental unit inspected. Failure to seek a residential rental license for each residential rental unit within 60 days of the date of sale or transfer of ownership shall result in revocation of the residential rental license.

§ 807. Appeals of Revocation of Residential Rental License.

[Ord. 1944, 8/12/2002, § 6; as amended by Ord. 2137, 6/8/2015]

1. Property Condition Appeals. Any person aggrieved by any decision of the Licensing and Inspections Officer may appeal to the Code Hearing Board in accordance with the provision of Chapter 1, Administration and Government, Part 2, § 216, Establishment of Code Hearing Board; Variances and Appeals.
2. Disruptive Conduct Appeals. Any person aggrieved by any decision of the Licensing and Inspections Officer in regard to a disruptive conduct report or the revocation of a residential rental license based upon disruptive conduct violations, may appeal to the Disruptive Conduct Board of Appeals. Such appeal must be filed, in writing, within 30 working days from the date of the alleged disruptive conduct or notice of revocation. The Code Hearing Board shall serve as the Disruptive Conduct Board of Appeals and shall follow the procedure for hearings and appeals as set forth in Chapter 1, § 216(4) of the Code of Ordinances of the Borough of Pottstown.

§ 808. Effective Date.

[Ord. 1944, 8/12/2002, § 6]

This Part shall become effective June 1, 2003.

§ 809. Fees: Penalties.

[Ord. 1944, 8/12/2002, § 7]

1. Residential Rental License and Registration Fees. All fees established in this Part shall be set by resolution of Borough Council from time to time. The applicable types of fees are as follows:
 - A. Registration. The fee for a residential rental registration as set forth and required by § 701 above.
 - B. Licensing. The fee required for a residential rental license which shall be payable per each residential rental unit.
 - C. Reinspections. The fee for any subsequent inspection and all subsequent reinspections per residential rental unit.
 - D. Reinstatement. The fee to reinstate a revoked residential rental registration or a residential rental license on a per residential rental unit basis.
2. Penalties.

- A. Revocation of Residential Rental Registration or Residential Rental License. A fine of not less than \$600 per residential rental unit for each month the violation exists. Each month the violation exists constitutes a separate violation. A fine shall not be sought for any period during which the residential rental unit is vacant and the owner, operator, responsible agent or manager is taking appropriate action to correct the violations.
- B. Failure to Register or Failure to Seek a Residential Rental License. Failure to register or failure to seek a residential rental license (for newly constructed, newly created or substantially rehabilitated residential rental units):
- (1) The owner, responsible agent or manager shall be sent a thirty-day notice of violation, warning them of their failure to comply with the terms of this Part. If they do not comply at the end of 30 days, there shall be a fine of not less than \$600 per residential rental unit for each month the violation exists. Each month the violation exists constitutes a separate violation.
 - (2) Whoever violates any provision of this Part or any Section of this Part shall upon a first offense be fined not more than \$1,000 or imprisoned not more than 90 days, or both.
 - (3) If, after any conviction for violation of this Part or any lawful order issued pursuant thereto, such person continues violation, then such person shall be liable for further prosecution, conviction and punishment without any necessity of the Licensing and Inspections Officer to issue a new notice of violation or order, and until such violation has been corrected.
[Amended by Ord. 2137, 6/8/2015]
 - (4) In addition to prosecution of persons violating this Part, the Licensing and Inspections Officer or any duly authorized agent of the Borough may take such civil or equitable remedies in any court of record of the Commonwealth of Pennsylvania, against any person or property, real or person, to effect the provisions of this Part.
[Amended by Ord. 2137, 6/8/2015]

Chapter 11. Housing

PART 1. TENANCY REPORTS

§ 101. Owners and Rental Agents Responsible for Reports.

[Ord. 2078, 10/12/2010]

Every owner and/or rental agent of any and all apartment buildings, mobile home parks, or any and all rental and leased residential properties, situate within the Borough, are required, on or before April 1, 1993, to submit to the Borough of Pottstown, on forms provided by the Borough, the number of parcels or units, including location, then being leased or available for lease, the name or names and mailing address of all renters or leasees over the age of 18 years occupying the said rental units or parcels, and other information the Borough deems necessary. The forms described in this section are collectively referred to as "tenancy reports."

§ 102. Submission of Annual Tenancy Report.

[Ord. 2078, 10/12/2010]

The property owner and/or rental agent is further required to file, annually, a completed tenancy report on or before January 31 of each year.

§ 103. Penalty for Violation.

[Ord. 2078, 10/12/2010]

Any person (which shall include any individual, partnership, association or corporation) convicted of a violation of any provisions or requirements of this Part shall be sentenced to a fine or penalty of not less than \$250 and not exceeding \$1,000, plus costs, and in default of payment of said fine and costs to a term of imprisonment not to exceed 30 days. For the purpose of this Section, the failure to submit the required tenancy report for each apartment building, mobile home park or other rental or leased residential property shall be a separate offense. Enforcement of this Part shall not begin until December 1, 2010.

PART 2. REGISTRATION AND LICENSING OF RESIDENTIAL RENTAL UNITS

§ 201. Purpose.

[Ord. 1944, 8/12/2002, § 1]

1. The purpose of this Part and the policy of the Borough of Pottstown shall be to protect and promote the public health, safety and welfare of its citizens, to establish rights and obligations of owners and occupants relating to residential rental units in the Borough and to encourage owners and occupants to maintain and improve the quality of life and quality of rental housing within the community. As a means to these ends, this Part provides for a systematic inspection program, registration and licensing of residential rental units and penalties.

2. In considering the adoption of this Part, the Borough makes the following findings:
- A. There is a growing concern in the community with the appearance and physical condition of many residential rental units.
 - B. There is a perception and appearance of greater incidence of problems with the maintenance and upkeep of residential properties which are not owner occupied as compared to those that are owner occupied.
 - C. There are a significant number of disturbances at residential rental units.
 - D. Violations of the various maintenance codes are generally less severe and more quickly corrected at owner-occupied units as compared to residential rental units.

§ 202. Definitions.

[Ord. 1944, 8/12/2002, § 2]

As used in this part, the following terms shall have the meanings indicated:

AGENT

Any person designated by the owner who has charge, care or control of a residential rental property.

CLEAN AND LIEN CHARGES

Charges imposed against the residential rental property related to health and safety services performed by the municipality, including, but not limited to, grass and weed cutting, snow and ice removal, trash and debris removal, and the securing of structures.

[Added by Ord. 2078, 10/12/2010]

CODE

Any State or local code or ordinance adopted, enacted or in effect in and for the Borough of Pottstown including, but not limited to, the BOCA National Building Code, the BOCA Plumbing Code, the BOCA Mechanical Code, the National Electrical Code, the BOCA Fire Prevention Code, the BOCA Property Maintenance Code, and the Pottstown Borough Zoning Ordinance [Chapter 27], and/or other future national or international codes and/or zoning ordinance amendments that may be subsequently adopted.^[1]

DESIGNATED RESPONSIBLE AGENT

An adult individual residing within the Borough designated by the owner of a residential rental unit pursuant to §203 herein. The designated responsible agent shall be the agent of the owner for service of process and receiving notices of demand to perform the obligations of the owner under this part and under rental agreements with the occupant.

[Added by Ord. 2078, 10/12/2010]

DISRUPTIVE CONDUCT

Any form of conduct, action, incident or behavior perpetrated, caused or permitted by any occupant or visitor of a residential rental unit that is so loud, untimely (as to hour of the day), offensive, riotous or that otherwise disturbs other persons of reasonable sensibility in their peaceful enjoyment of their premises or causes damage to said premises such that a report is made to the Borough Authorities, a police officer and/or a Borough Licensing and Inspections Officer complaining of such conduct, action, incident or behavior. It is not necessary that such conduct, action, incident or behavior constitute a criminal offense, nor that criminal charges be filed against any person in order for said person to have perpetrated, caused or permitted the commission of disruptive conduct, as defined herein. Provided, however, that no disruptive conduct shall be deemed to have occurred unless a Licensing and Inspections Officer and/or a police officer shall investigate, and a Licensing and Inspections Officer makes a determination that such did occur, and keep written records, including a disruptive conduct report, of such occurrences.

[Amended by Ord. 2137, 6/8/2015]

DISRUPTIVE CONDUCT REPORT

A written report of disruptive conduct on a form to be prescribed therefore, to be completed by the Licensing and Inspections Officer and which shall be maintained by the Licensing and Inspections Office. The tenant and the owner, operator, responsible agent or manager shall be notified of any such occurrences, in writing. The tenant and the owner, operator, responsible agent or manager shall receive a copy of the disruptive conduct report or written notice that disruptive conduct has occurred.
[Amended by Ord. 2137, 6/8/2015]

HOTEL UNIT

Any room or group or rooms located within a hotel or motel forming a single habitable unit used or intended to be used for living and sleeping only on a transient basis for a period of less than 30 days.

RENTAL AGREEMENT(S)

A written agreement between the owner/landlord and occupant/tenant supplemented by the addendum or some other document determined, in writing, to be reasonably acceptable to the Borough as required under §203 of this Part, embodying terms and conditions concerning the use and occupancy of a specified regulated rental unit or premises.

[Added by Ord. 2078, 10/12/2010]

RESIDENTIAL RENTAL LICENSE

A document issued by the Licensing and Inspections Office, on an annual basis, to the owner, operator, responsible agent or manager of a residential rental unit upon compliance with all applicable codes granting permission to operate a residential rental unit in the Borough of Pottstown. Such license is required for lawful rental to third parties and occupancy by third parties of any rental units under this Part, unless the residential rental unit is exempt from the license provisions of this Part.

[Amended by Ord. 2078, 10/12/2010, § 3; and by Ord. 2137, 6/8/2015]

RESIDENTIAL RENTAL PROPERTY

Any parcel of real estate identified by a tax parcel number containing at least one residential rental unit.

RESIDENTIAL RENTAL REGISTRATION

The document issued by the Licensing and Inspections Department of the Borough of Pottstown to the owner of a parcel of land containing at least one residential rental property evidencing the existence of said residential rental unit(s). This registration shall be required until the Licensing and Inspections Officer inspects the unit and issues a residential rental license for each residential rental unit. A residential rental registration shall continue to be required for lawful rental and occupancy of residential rental units under this Part, unless a Licensing and Inspections Officer has inspected the building containing at least one residential rental property and has issued a residential rental license(s) or the residential rental unit is exempt from the registration provisions of this Part. This registration does not warrant the proper zoning, habitability, safety or condition of the residential rental unit in any way.

[Amended by Ord. 2137, 6/8/2015]

RESIDENTIAL RENTAL UNIT

A rooming unit or dwelling unit let for rent, or a rooming unit or dwelling unit occupied by someone other than the owner. A residential rental unit includes dwelling units under lease purchase agreements or long-term (greater than six months) agreements of sale. Residential rental units are further classified as follows:

[Amended by Ord. 2137, 6/8/2015]

A. SINGLE-FAMILY UNIT

A residential rental unit that is not categorized as a short-term rental unit or as an apartment.

B. APARTMENT

A suite of rooms in a building or structure containing at least two other such dwellings, each intended to be used as an independent housekeeping unit for one family with separate cooking, food storage, bathing and toilet facilities with access directly or by a common hallway and/or stairs to the outside.

C. APARTMENT UNIT

A dwelling unit within an apartment.

[1] Editor's Note: See Chapter 5, Code Enforcement, and § 211 of Chapter 1.

§ 203. Owner and Occupant Duties.

[Ord. 1944, 8/12/2002, § 3]

1. Owner's Duties.

- A. It shall be the duty of every owner, operator, responsible agent or manager to keep and maintain all residential rental units in compliance with all applicable codes and provisions of all applicable State laws and regulations and local ordinances and to keep such property in good and safe condition and to be aware of, and to act to eliminate, disruptive conduct in such residential rental units.
 - B. It shall be unlawful for any person, as owner, operator, responsible agent or manager to conduct or operate or cause to rent any residential rental unit within the Borough of Pottstown without having a residential rental registration.
 - C. Every owner, operator, or designated responsible agent shall include the amendment attached hereto as an addendum to the rental agreement in each lease of the residential rental unit taking affect on or after January 1, 2003. Said amendment is hereby considered to be a part of every written rental agreement unit in the Borough of Pottstown executed on or after January 1, 2003, and said amendment shall be posted conspicuously in each residential rental unit. In addition, every owner, operator, or designated responsible agent shall comply with the requirements set forth in Subsection G below, as it relates to the written rental agreement.
[Amended by Ord. 2078, 10/12/2010, § 5]
 - D. Every owner, operator, responsible agent or manager shall display the residential rental registration or residential rental license in each residential rental unit. The residential rental registration or residential rental license shall include the following information:
 - (1) The name, mailing address and telephone number of the owner, operator, responsible agent or manager.
 - (2) The evenings and hours on which garbage and recycling are to be placed curbside for collection.
 - (3) The telephone number to call to register complaints regarding the physical condition of the residential rental unit.
 - (4) The telephone number for emergency police, fire and medical services.
 - (5) The date of expiration of the residential rental license.
 - (6) A summary of the owner's and occupant's duties under this Part.
 - E. It shall be the responsibility of every owner, operator, responsible agent or manager to employ policies and to manage the residential rental units under his/her control in compliance with the provisions of this part, Borough codes and applicable State laws.
 - F. No residential rental registration or residential rental license shall be issued to any residential rental unit owned or operated by a person residing outside the Borough of Pottstown (hereinafter referred to as "absentee owner/operator") unless there is provided to the Licensing and Inspections Office the name, mailing address, actual street address, telephone number, fax number and e-mail address of a designated responsible agent residing or working within the Borough of Pottstown authorized to accept service of process on behalf of the legal owner of said residential rental unit. For the purposes of this Section, a post office box is not acceptable for the designated responsible agent's address.
[Amended by Ord. 2078, 10/12/2010, § 6; and by Ord. 2137, 6/8/2015]
- (1) The designation of the designated responsible agent shall not be valid unless signed by the absentee owner/operator and the designated responsible agent to act on behalf of the absentee owner/operator. The absentee owner/operator shall be required to notify the Licensing and Inspections Office within 15 days of any change in the identity of the designated responsible agent.

- (2) Absentee owner/operators residing outside the Borough of Pottstown but within a five-mile radius of Pottstown Borough and meeting the following criteria shall be exempt from naming a designated responsible agent:
 - (a) No cases of three disruptive conduct complaints within a twelve-month period regarding the same occupants of a particular residential rental unit, as documented by upheld or unappealed disruptive conduct reports.
 - (b) All real estate taxes, water, sewer, trash fees, and clean and lien charges relating to the rental property paid in full by December 31 of the preceding year.
 - (c) The residential units shall pass inspection at the first reinspection, both interior and exterior of the property must be in compliance with all codes (there will be an allowance for exterior repairs for the time of the year).
 - (d) The owner, operator or designated responsible agent must have corrected any code violations cited within 30 days.
- G. Every owner, operator, or designated responsible agent shall comply with the following requirements relating to written rental agreements:

[Added by Ord. 2078, 10/12/2010]

 - (1) All rental agreements for residential rental unit(s) shall be in writing and shall be supplemented with the addendum attached hereto as Appendix A^[1] or by some other document determined, in writing, to be reasonably acceptable to the Borough. No oral leases and no oral modifications thereof are permitted. All disclosures and information required to be given to the occupant(s) by the owner shall be furnished before the signing of the rental agreement. The owner shall provide the occupant(s) with copies of the rental agreement and addendum (or other document approved by the Borough) upon execution.

[1] *Editor's Note: Appendix A is on file in the office of the Borough Secretary.*
 - (2) Terms and Conditions. The owner and the occupant(s) may include in a rental agreement terms and conditions not prohibited by this Part or other applicable ordinances, regulations and laws, including rent, term of the agreement, and other provisions governing the rights and obligations of the parties.
 - (3) Prohibited Provisions. Except as otherwise provided by this Part, rental agreements may provide that the occupant(s) or the owner(s) agree to waive or to forego rights or remedies under this Part. A provision prohibited by this subsection included in a rental agreement is unenforceable.
 - (4) Attachment of Summary of Part to Rental Agreement. Following the effective date of this Part, and unless otherwise approved in writing by the Borough, a summary hereof in a form provided to the owner by the Borough at the time of licensing shall be attached to each rental agreement delivered by or on behalf of an owner when such agreement is presented for signing by an occupant. If a summary has been provided when the rental agreement was first executed, a summary does not have to be provided upon renewal. Where a rental agreement has been entered into prior to the effective date of this Part, the owner shall provide the occupant(s) with a copy of the summary within 60 days after enactment of this Part.
 - (5) Written Acknowledgment. Unless otherwise approved in writing by the Borough, the owner shall secure a written acknowledgment from the occupant(s) that the occupant(s) have received the disclosure and information required by this Part.
 - (6) Provide Acknowledgment. Unless otherwise approved in writing by the Borough, upon oral or written request by the Borough of Pottstown, the owner, within 10 days of the request, shall furnish the Borough copies of the acknowledgment that the occupant(s) received the disclosures and information required by this Part.
 - (7) Provide Rental Agreement(s). Upon oral or written request by the Borough of Pottstown, the owner, within 10 days of the request, shall furnish to the Borough for inspection purposes only,

copies of the rental agreement(s) the owner has entered into for the residential rental unit(s).

H. Enforcement Procedures by Owner.

[Added by Ord. 2078, 10/12/2010; as amended by Ord. 2137, 6/8/2015]

- (1) Within 10 days after receipt of written notice from the Licensing and Inspections Office that an occupant of a residential rental unit has violated a provision of this Part, the owner shall take immediate steps to remedy the violation and take steps to assure that there is not a reoccurrence of the violation.
- (2) Within 20 days after receipt of a notice of violation, the owner shall file with the Licensing and Inspections Officer a report (on a form provided by the Borough) setting forth what action the owner has taken to remedy the violation and what steps he or she has taken to prevent the reoccurrence of the violation. The report shall also set forth a plan as to steps the owner will take in the future if the violation reoccurs.
- (3) The Licensing and Inspections Officer shall review the report and, if adequate steps have been taken, and the plan is adequate to address future violations, shall approve the plan. If the Licensing and Inspections Officer does not approve the plan, the Licensing and Inspections Officer shall provide to the owner, in writing, the reason why the plan is not acceptable. The owner shall, on his or her initiative, enforce the plan and failure to do so shall be a violation of this Part.
- (4) In the event that a second violation occurs within the license year involving the same occupant(s), the Licensing and Inspections Officer may direct the owner to evict the occupant(s) who violated this Part and to not permit the evicted occupant(s) to occupy the premises during the subsequent licensing period.

I. Enforcement Regulations of Borough. In addition to any fines that can be imposed under §809 of Chapter 5, Code Enforcement, the Borough shall be permitted to take the following action to ensure enforcement of this Part:

[Added by Ord. 2078, 10/12/2010; as amended by Ord. 2137, 6/8/2015]

- (1) Code Violations. Upon receiving notice of any code violations from the Licensing and Inspections Officer, the owner shall promptly take action, or cause the necessary action to be taken, to abate the offending condition and eliminate the violation.
- (2) Borough Can Make Repairs. In the case where the owner of the premises shall neglect, fail or refuse to comply with any notice from the Borough or its Licensing and Inspections Officer to correct a health or safety violation relating to maintenance and repair of the premises under any code(s) within the period of time stated in such notice, the Borough may cause the violation to be corrected. There shall be imposed upon the owner a charge of the actual costs involved, plus 10% of said costs for each time the Borough shall cause a violation to be corrected, and the owner of the premises shall be billed after same has been completed (clean and lien charge). Any such bill remaining unpaid and outstanding after the time specified therein for payment shall be grounds for the imposition of a municipal lien upon the premises as provided by law. Such a lien may be reduced to judgment and enforced and collected as provided by law, together with interest at the legal rate and court costs. The remedies provided by this paragraph are not exclusive and the Borough and its Licensing and Inspections Officer may invoke such other remedies available under this Part or other applicable codes, ordinances or statutes, including, where appropriate, condemnation proceedings or declaration of premises as unfit for habitation or suspension, revocation or nonrenewal of the license issued hereunder.
- (3) Inspection of Premises. The owner shall permit inspections of the premises by the Licensing and Inspections Officer at reasonable times upon reasonable notice. If the owner does not permit such inspection of the premises by the Licensing and Inspections Officer, the Licensing and Inspections Officer may apply a administrative warrant to inspect the premises.

J. Duties of Occupants.

[Added by Ord. 2078, 10/12/2010]

- (1) General. The occupant(s) shall comply with all obligations imposed upon the occupant(s) by this Section, all applicable codes and ordinances of the Borough and all applicable provisions of State law.
 - (a) The maximum number of persons permitted in any residential rental unit at any time shall not exceed one person per each 40 square feet of habitable floor space in said residential rental unit. The maximum number of persons permitted in the common area of any multiple unit dwelling at any time shall not exceed one person for each 15 square feet of common areas on the premises.
 - (b) The occupant(s) shall dispose from their residential rental unit all rubbish, garbage and other waste in a covered trash container and separate and place for collection all recyclable materials in compliance with the trash and recycling ordinances of the Borough.
 - (c) The occupant(s) shall, unless otherwise permitted by applicable law or ordinance, occupy or use the residential rental unit for no other purpose than as a residence.
 - (d) The occupant(s) shall not engage in nor tolerate nor permit others on the premises to engage in any conduct declared illegal under the Pennsylvania Crimes Code (18 Pa.C.S.A. § 101 et seq.), the Liquor Code (47 P.S. § 1-101 et seq.), or the Controlled Substance, Drug, Device and Cosmetic Act (35 P.S. § 780-101 et seq.).

2. Occupant Duties.

- A. The occupant(s) shall comply with all obligations imposed by this Part and all applicable codes and ordinances of the Borough of Pottstown, as well as all State laws and regulations.
- B. The occupant(s) shall conduct themselves and require other persons including, but not limited to, guests on the premises and within their residential rental unit with their consent, to conduct themselves in a manner that will not disturb the peaceful enjoyment of the premises by others and that will not disturb the peaceful enjoyment of adjacent or nearby dwellings by people occupying the same.
- C. The occupant(s) shall not engage in, nor tolerate nor permit others on the premises to cause damage to the residential rental unit or engage in disruptive conduct, or other violations of this Part, Borough codes or applicable State laws.

3. Disruptive Conduct Procedure.

[Amended by Ord. 2137, 6/8/2015]

- A. Police officers and/or Licensing and Inspections Officers shall investigate alleged incidents of disruptive conduct. The Licensing and Inspections Officer shall complete a disruptive conduct report upon a reasonable finding that the reported incident constitutes disruptive conduct as defined herein. The information filed in said report shall include, if possible, the residential rental unit, the residential rental property, a description of the alleged disruptive conduct, the identity of the alleged perpetrator(s) of the disruptive conduct and all other obtainable information, including the factual basis for the disruptive conduct described on the prescribed form. A copy of the disruptive conduct report shall be given or mailed to the occupant and mailed to the owner, operator, responsible agent or manager within 20 working days of the occurrence of the alleged disruptive conduct.
- B. The occupant or the owner, operator, responsible agent or manager shall have 30 working days from the date of the alleged disruptive conduct to appeal the contents of said disruptive conduct report. The appeal shall be made in writing and submitted to the Licensing and Inspections Office. An appeal of the third disruptive conduct report within a twelve-month period shall stay the eviction proceedings against the occupants until the appeal is resolved, only if the eviction proceedings were a direct result of the third disruptive conduct report.
- C. After three unappealed or unsuccessfully appealed disruptive conduct incidents (or any combination thereof) in any twelve-month period by an occupant documented by disruptive conduct reports, the owner, operator, responsible agent or manager shall have 10 working days from the date of his/her receiving the notice to begin eviction proceedings against the occupants. Failure to take such action will result in the immediate revocation of the residential rental license. The residential rental unit involved

shall not have its residential rental license reinstated until the reinstatement fee is paid and the disruptive occupants have been evicted, the district justice has ruled in the occupant's favor, or the district justice has ruled in the owner's favor but has not ordered the eviction of the occupant(s), or the occupants have filed an appeal to a higher court thereby preventing their eviction. The disruptive occupants, upon eviction, shall not reoccupy any residential rental unit on the same residential rental property involved for a period of at least one year from date of eviction. This subsection is not intended to limit or inhibit the owner, operator, responsible agent or manager's right to initiate eviction actions prior to the third disruptive conduct incident or otherwise as permitted by law.

- D. The content of the disruptive conduct report shall count against all occupants of the residential rental unit. More than one disruptive conduct report filed against any occupant of a residential rental unit in a twenty-four-hour period shall count as a single disruptive conduct report for the purpose of the preceding subsection. The Licensing and Inspections Office shall maintain a list of the names of all occupants evicted as a result of the preceding subsection. The names shall remain on the list for a period of five years and shall be considered a public record under the Pennsylvania Right-to-Know Law.

§ 204. Exempt Units.

[Ord. 1944, 8/12/2002, § 4]

1. The registration and licensing provisions of this Part shall not apply to hospitals, nursing homes, group homes or other rental units used for human habitation which offer or provide licensed medical or nursing services and wherein all operations of such facilities are subject to County, State or Federal licensing or regulations concerning the health and safety of the users, patients or tenants. The registration and licensing provisions of this Part also shall not apply to hotel units, as defined previously, or dormitories, fraternity houses and sorority houses, as defined in the Borough's Zoning Ordinance [Chapter 27].
2. If, in response to a complaint, an exempt unit is found to be in violation of a Borough code, the owner operator, responsible agent or manager shall correct the violation(s) within the time frame cited by the Licensing and Inspections Officer. If the violation(s) is/are not corrected, the unit shall lose its exemption until the violation(s) is/are corrected. If three verified complaints are received in any twelve-month period, the unit shall lose its exemption for a period of five years.

[Amended by Ord. 2137, 6/8/2015]

3. This exemption does not apply to the disruptive conduct provisions of this Part as describe above.

§ 205. Procedure for Applying for Residential Rental License.

[Ord. 2137, 6/8/2015]

1. All owners of residential rental property shall initially submit a complete residential rental license application to the Borough Licensing and Inspections Department on or before September 1, 2015. Thereafter, a complete residential rental license application to the Borough Licensing and Inspections Department shall be submitted on or before March 15 of each even-numbered calendar year beginning in 2018. A separate residential rental license application shall be required for each residential rental property identifying each residential rental unit. Every residential rental license application shall be accompanied by a residential rental license application fee, in an amount determined by Borough Council from time to time by resolution, along with a copy of the lease for the residential rental unit if requested by the Licensing and Inspections Department.
2. The Licensing and Inspections Department shall schedule inspections of residential rental units with a minimum of 10 days' advance notice. Nothing in this section shall be deemed to limit or restrict the ability of the Borough to conduct inspections of any residential rental unit as deemed necessary to enforce any part of the Code of the Borough of Pottstown or the laws of the Commonwealth. The applicant is responsible for scheduling of the inspection and payment of any and all costs of the inspection (hereinafter referred to as the "inspection fee"), as fixed from time to time by resolution of the Borough Council.

3. Upon submission of a residential rental license application, the Licensing and Inspections Department shall perform an inspection of the residential rental unit to insure that the residential rental unit meets all of the requirements of the Code of the Borough of Pottstown, including, but not limited to, the International Property Maintenance Code, the Uniform Construction Code, the Fire Prevention Code, the Zoning Ordinance, the terms and conditions of this section, and any other applicable provisions of the Code of the Borough of Pottstown or the laws of the Commonwealth.
4. Upon successful completion of all requirements of this Part, the Licensing and Inspections Department shall issue an appropriate residential rental license. Residential rental units which fail to meet the requirements of this Part shall not qualify for the issuance of a residential rental license unless the residential rental unit is brought into compliance with this Part. A reinspection fee shall be paid by the owner seeking a second or subsequent inspection under any application for a residential rental license prior to the licensing and Inspections Department conducting such reinspection. The inspection fee shall be as fixed from time to time by resolution of the Borough Council.

§ 206. Biennial Annual Inspection Required.

[Ord. 2137, 6/8/2015]

1. Beginning July 1, 2015, and continuing thereafter, property subject to a residential rental license under this Part shall be inspected as provided herein biennially.^[1] The Licensing and Inspections Department shall have discretion to schedule inspections of licensed properties consistent with this Part. Failure to comply with a notice from the Licensing and Inspections Department regarding the scheduling or conduct of a mandatory biennial inspection under this Part may result in suspension and revocation of the residential rental license.
[1] *Editor's Note: Section 12 of Ord. 2137 provided: "Notwithstanding anything to the contrary contained in this ordinance, the initial cycle for the first biennial inspection will be for a period of 30 months and begin July, 1, 2015, and conclude December 31, 2017. During this 30 months, a change in tenancy in any residential rental unit shall require an inspection of the residential rental unit. Thereafter, the biennial inspection cycle shall commence January 1, 2018, as described in this ordinance and the requirement for an inspection and issuance of a residential rental license on a change in tenancy shall terminate."*
2. Any residential rental unit proposed to be issued a residential rental license, in addition to any other relevant requirements, must demonstrate compliance with the following standards;
 - A. Each habitable unit must have at least one habitable room of not less than 120 square feet.
 - B. All spaces, other than kitchens and bathrooms, must contain a minimum of 70 square feet to be considered habitable spaces.
 - C. Bedrooms must contain a minimum of 70 square feet plus an additional 50 square feet for each additional person occupying the same room.
 - D. No basement space may be considered habitable unless it meets the requirements for secondary means of egress/escape as defined by the applicable Borough Building or Property Maintenance Code.
3. To the greatest extent practical, the Licensing and Inspections Department shall stagger the inspection of the residential rental units throughout the twenty-four-month period.
4. Residential rental licenses shall be valid for a period of 24 months and may be renewed upon application. All residential rental units seeking renewal of a residential rental license must comply with all terms and conditions of this Part.
5. Residential rental licenses shall not be subject to transfer or assignment to any new owner of any residential rental property.

4. Policy Considerations.

Finally, courts are to take into account policy considerations in interpreting Article 1, Section 8. As detailed previously, the Borough's police powers permit it to promote the health, morals or safety and the general well-being of the community. *Adams Sanitation Co., Inc. v. Com. Dept. of Environmental Protection*, 715 A.2d 390 (Pa. 1998). A routine inspection of the physical condition of private property is minimal intrusion compared to the typical police officer's search for the fruits and instrumentalities of crime. *Tobin, supra*. The warrant procedure in the subject Ordinance requires that a decision to search private property without consent is justified by a reasonable governmental interest. (Exhibit B, § 11-203(I)(3)). Reasonableness is the ultimate standard and a search of private property without proper consent is unreasonable unless it has been authorized by a valid search warrant. *Camara*, 387 U.S. at 528-29. However, if a valid public interest, such as the health and safety of the community, justifies the intrusion contemplated, then there is probable cause to issue a suitably restricted search warrant. *Tobin, supra*. Accordingly, this factor does not provide a compelling reason for this Court to declare the Pottstown Ordinance unconstitutional.

C. Preliminary Objection- Demurrer Pursuant to Pa.R.Civ.P. 1028(a)(4): Dismissal of Keith Place—Official Capacity.

Plaintiffs have brought this action against Defendant Place only in his official capacity as the Director of Pottstown's Licensing and Inspections Department. (Amended Complaint, at ¶ 9). Importantly, Plaintiffs make no specific factual allegations against Defendant Place with regard to his role in the enactment or approval of the Ordinance or the implementation or enforcement of the rental inspection elements of the Ordinance. *Id.* Indeed, the Declaratory Judgment claim alleging that the Borough's Ordinance violates the Pennsylvania Constitution is asserted against the Borough, not Defendant Place. (Amended Complaint). Therefore, all

Preliminary Objections as to Mr. Place must be sustained as a matter of law.

Furthermore, as reflected in the Amended Complaint, Mr. Place's involvement in this matter solely arises out of his status as Director of the Licensing and Inspections Department, and is entitled to official immunity from Plaintiff's claims. *See* 42 Pa.C.S. § 8545. Pursuant to the Pennsylvania Tort Claims Act, "[a]n employee of a local agency is liable for civil damages on account of any injury ... caused by acts of the employee which are within the scope of his office or duties only to the same extent as his employing local agency..." *Id.* In other words, this litigation is more appropriately directed at the Borough and **not** Mr. Place. Accordingly, Defendant Place is entitled to a demurrer based on official immunity. *See* Pa.R.Civ.P. 1028(a)(4).

V. CONCLUSION

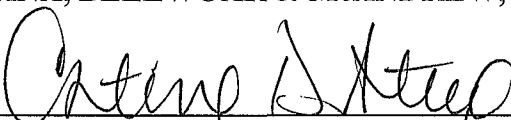
For the reasons set forth herein, the Pottstown Defendants' Preliminary Objections pursuant to Rule 1028(a)(4) should be sustained, and the Amended Complaint be dismissed as a matter of law, with prejudice.

Respectfully Submitted,

SIANA, BELLWOAR & McANDREW, LLP

Date: August 15, 2017

By:



Sheryl L. Brown, Esquire, I.D. # 59313

Christine D. Steere, Esquire, I.D. #84066

Attorneys for Defendants,

Pottstown of Pottstown and Keith A. Place

941 Pottstown Pike, Suite 200

Chester Springs, PA 19425

(P): 610.321.5500 (F): 610.321.0505

slbrown@sianalaw.com

cdsteere@sianalaw.com

EXHIBIT A

Chapter 5. Code Enforcement

PART 3. INTERNATIONAL PROPERTY MAINTENANCE CODE

§ 301. Adoption of Code.

[Ord. 2019, 4/10/2006; as amended by Ord. 2159, 12/12/2016]

A certain document, three copies of which are on file in the office of the Licensing and Inspections Director of the Borough of Pottstown, being marked and designated as the "International Property Maintenance Code, 2009 Edition," as published by the International Code Council, be and is hereby adopted as the Property Maintenance Code of the Borough of Pottstown, in the State of Pennsylvania, for regulating and governing the conditions and maintenance of all property, buildings and structures; providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use, and the condemnation of buildings and structures unfit for human occupancy and use, and the demolition of such existing structures as herein provided; providing for the issuance of permits and collection of fees therefor; and each and all of the regulations, provisions, penalties, conditions and terms of said Property Maintenance Code on file in the offices of the Borough of Pottstown are hereby referred to, adopted, and made a part hereof as if fully set out in this Part, with the additions, insertions, deletions and changes prescribed in § 302 of this Part.

§ 302. Revisions to Code.

[Ord. 2019, 4/10/2006]

The following sections are hereby revised:

- A. Section 101.1: Borough of Pottstown.
- B. Section 103.5: Comprehensive Fee Resolution.
- C. Section 304.14: March 1 to November 15.
- D. Section 602.3: September 15 to May 15.
- E. Section 602.4: September 15 to May 15.
- F. The following Section 302.8 is hereby amended to read as follows:

Section 302.8. Except as provided in other regulations, no inoperative, unregistered, uninspected, or unlicensed motor vehicle shall be parked, kept, or stored on any premises, and no such vehicle shall, at any time, be in a state of major disassembly for a period in excess of 30 days, or disrepair, or in the process of being stripped or dismantled. Painting of vehicles is prohibited unless conducted inside an approved spray booth.

EXCEPTION - A vehicle of any type is permitted to undergo major overhaul, including body work, provided that such work is performed inside a structure or similarly enclosed area designed and approved for such purposes.

§ 303. Additions to Code.

1. A new Section 112 shall be created and provide as follows:

Section 112. Property Transfer Use and Occupancy Certificate.

Section 112.1. Single-Family Owner-Occupied Dwelling Requirements. Upon transfer of title to a new owner, or upon said building becoming vacant, no single-family dwelling shall be occupied, in whole or in part, until the issuance of a certificate by the Code Enforcement Officer. The following requirements must be met before a certificate shall be issued:

- 112.1.1. A fire extinguisher equipped with 2 1/2 pounds ABC drypowder rating must be supplied for the dwelling mounted in the kitchen on the wall near the exit doorway.
- 112.1.2. All kitchens, bathrooms, powder rooms and laundry rooms, or any garage and exterior outlets within six feet of a water source, must be supplied with a ground-fault receptacle.
- 112.1.3. All gas ranges must be supplied with shutoff valves installed behind the range.
- 112.1.4. All electrical ranges must have an outlet installed at the rear of the range.
- 112.1.5. The property must be in a clean, safe and sanitary condition.
- 112.1.6. Before the issuance of the property transfer use and occupancy certificate, a full buyer notification inspection shall be conducted. The old owner must inform the new owner of all pending violations and a letter of intent shall be signed by the buyer or new owner. All violations must be corrected within 60 days upon transfer of the title to the new owner.
- 112.1.7. Upon failure of a property transfer to a new owner, all listed violations shall be corrected within 60 days by the present owner. Failure to abate said violations shall be subject to the penalties set forth in Section PM106.4.
- 112.1.8. Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between garages and residences shall be equipped with solid wood doors, not less than one and three-eighths inches in thickness, solid or honeycomb core steel doors not less than one and three eighths inches thick, or twenty-minute fire-rated doors.

Section 112.2. Single-Family, Two-Family and Multifamily Dwelling Units. Upon transfer of title to a new owner, no single-family rental unit, no two-family dwelling and no multiple dwelling shall be occupied, in whole or in part, until the issuance of a property transfer certificate of occupancy by the Code Enforcement Officer that said structure conforms in all respects to the requirements of this code. The following requirements must be met before a property transfer certificate of use and occupancy shall be issued:

- 112.2.1. Before the issuance of the said certificate of occupancy, a full code compliance inspection shall be conducted. The old owner must inform the new owner of all pending violations, and a letter of intent shall be signed by the buyer or new owner and all violations must be corrected within 60 days upon transfer of the title to the new owner.
- 112.2.2. Upon failure of a property transfer to a new owner, all listed violations shall be corrected within 60 days by the present owner. Failure to abate said violations shall be subject to the penalties set forth in Section PM106.4.
- 112.2.3. All hazardous building, safety, fire, plumbing and electrical violations cited at the time of inspection by the Code Enforcement Officer shall be corrected in the time specified by the Code Inspector.
- 112.2.4. If the dwelling unit is serviced by an individual water supply, the water supply shall be terminated and the dwelling unit shall be connected to the available public water main as required in Part 4 of this chapter, adopting the International Plumbing Code (2009 Edition).

Section 112.3. Commercial, Office, Manufacturing and Industrial Buildings. Upon transfer of title to a new owner, no commercial, office, manufacturing or industrial building shall be occupied, in whole or in part, until the issuance of a property transfer certificate of occupancy by the Code Enforcement Officer that said structure conforms in all respects to the requirements of this code, the Property Maintenance Code, the Fire Prevention Code and the Plumbing Code, and Chapter 27, Zoning, of the Pottstown Borough Code of Ordinances. The following requirements must be met before a property transfer certificate of use and occupancy shall be issued:

Section 112.3.1. Before the issuance of the said certificate of occupancy, a full code compliance inspection shall be conducted. The old owner must inform the new owner of all pending violations, and a letter of intent shall be signed by the buyer or new owner, who will be responsible for the correction of the violations, which must occur within 60 days of transfer of the deed to the new owner.

Section 112.3.2. In the event that the property transfer does not occur, the present owner must correct all listed violations within 60 days of the date on which the settlement on the property was to have occurred. Failure to abate the listed violations shall subject the present owner to the penalties set forth in this code and as prescribed by the Code of Ordinances of the Borough of Pottstown.

Section 112.3.3. All hazardous building, safety, fire, plumbing and electrical violations cited at the time of inspection by the Code Enforcement Officer shall be corrected in the time specified by the Code Inspector.

Section 112.4. Fees. The fee paid to the Borough of Pottstown for the residential housing inspection for each residential housing unit shall be \$65 for each unit, and the fee to be paid for commercial, office, manufacturing and industrial inspection shall be the actual amount incurred by the Borough for the inspection of any unit. These fees may be changed from time to time by resolution of the Borough Council.

Section 112.5. Caretaker. In every multiple dwelling in which the owner does not reside, there shall be a responsible person, designated by the owner, residing on the premises whose duties, include maintaining the commonly used parts of the premises.

Section 112.6. Trash Collection. No trash or garbage is to be set out for collection prior to 4:00 p.m. the night before the scheduled pickup. All receptacles for the collection of garbage and/or trash shall be removed from the curb of the various streets adjacent to the property where the trash/garbage is accumulated prior to 6:00 p.m. on the day of the actual pickup.

Section 112.7. Residential Rental Units. All residential rental units shall require a biennial inspection for code compliance pursuant to the requirements of § 801 of Part 8 of Chapter 5 of the Pottstown Borough Code of Ordinances, as amended.

Section 112.8. Commercial, Office, Manufacturing and Industrial Units. All commercial, office, manufacturing and industrial units that become vacant or have a change of occupant must be inspected for code compliance prior to reoccupancy of the said unit. It is the responsibility of the owner or the owner's agent to arrange for such inspection. Prior to reoccupancy of the said unit, all code violations must be corrected and a rental license must be issued.

Section 112.9. Delinquent Water, Sewer, Waste Collection and Disposal Bills for All Rental Units to be Paid. All outstanding bills for water, sewer and waste collection and disposal, and clean and lien services, for any residential, commercial, office, manufacturing and industrial rental unit, that are more than 30 days' delinquent shall be paid in full prior to the issuance of a rental license.

Section 112.10. Short-Term Rental Units. All rooming houses, hotels, motels, bed-and-breakfasts or similar facilities that house people, property or business on a short-term basis where different people occupy a unit for a period of time of one month or less shall be inspected for code compliance once a year, unless such unit is exempt pursuant to § 204 of Chapter 11. It is the responsibility of the owner or the owner's agent to arrange for such inspection and to pay the fee therefor, which fee shall be established from time to time by resolution of the Borough Council. An annual license shall be issued for the short-term rental facility, provided that a minimum of 75% of the individual units comply with all Borough codes. Certificates of occupancy will be issued for individual units, and any individual unit that does not comply with all Borough codes will not receive a certificate of occupancy and shall not be occupied until all code violations have been corrected and a certificate of occupancy has been issued.

Section 112.11. Absentee Landlords to Designate Authorized Agent. All owners of rental property (landlords) who do not reside in Montgomery County, Chester County or Berks County, Pennsylvania, shall designate, in writing, an authorized agent, who resides within one of the three aforesaid counties, who shall be responsible for receiving all notices issued by the Borough pertaining to the rental property. The landlord shall also provide, in writing, the business address and telephone number of the person or entity that the landlord designates as its authorized agent.

Section 112.12. Sanitation. All exterior property and premises shall be maintained clean, safe, sanitary and free from any accumulation of rubbish or garbage. Interior-type furniture which would be adversely affected by the elements and/or susceptible to fire and/or infestation by insects, rats or other vermin is

prohibited from being placed outside of structures. Such prohibited furniture shall include but not be limited to upholstered couches and chairs or other fabric-covered articles not designed or intended for exterior use. When the Code Enforcement Officer determines that prohibited or abandoned furniture is located in an exterior property area, the Code Enforcement Officer shall cause the owner or other responsible person to be notified in accordance with § 215 of Chapter 1, Administration and Government, of this Code. If the prohibited or abandoned furniture is not removed within the time frame set forth in the notice, the Borough may cause the abandoned or prohibited furniture to be removed and the owner to be billed for the cost thereof in accordance with the provisions of this Code. If the cost of removal is not paid within 15 days, the Borough may impose a lien for the cost of said removal in a manner provided by law.

2. Section 304.3, Premises Identification, of Section 304, Exterior Structure, of Chapter 3, General Requirements, of the International Property Maintenance Code, 2009 Edition, is modified to read as follows:
[Added by Ord. 2107, 2/11/2013]

304.3 Premises Identification. Buildings shall have approved address numbers placed in a position to be plainly legible and visible from the street or road fronting the property and to the rear of properties visible from alleys and half streets. These numbers shall contrast with their background. Address numbers shall be arabic numerals or alphabet letters. Numbers shall be a minimum of four inches high with a minimum stroke width of 0.5 inch.

§ 304. Repealer.

[Ord. 2019, 4/10/2006]

All ordinances or parts of Ordinances, including but not limited to Part 3, BOCA National Property Maintenance Code, of Chapter 5, Code Enforcement, of the Code of Ordinances of the Borough of Pottstown, as amended, which shall be inconsistent with the Part shall be and the same expressly are repealed.

§ 305. Construal of Provisions.

[Ord. 2019, 4/10/2006]

Nothing in this Part or in the Property Maintenance Code hereby adopted shall be construed to affect any suit or proceeding impending in any court or any rights acquired or liability incurred or any cause or causes of action acquired or existing under any act or ordinance hereby repealed as cited in § 304 of this Part, nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Part.

§ 306. Future Editions.

[Ord. 2019, 4/10/2006; as amended by Ord. 2159, 12/12/2016]

It is the intent of the Burgess and Town Council of the Borough of Pottstown to adopt the 2009 Edition of the International Property Maintenance Code. However, in the event that the State of Pennsylvania prepares and adopts a later version as amended and modified by the Pennsylvania Uniform Construction Code (Act 45), 34 Pennsylvania Code Part XIV, that most recent tri-annual edition of the International Property Maintenance Code that is in equivalent cycle with the adopted UCC will become the most recent edition of the International Property Maintenance Code and shall become part of the Code of Ordinances of the Borough of Pottstown without the need for the adoption of any future amending ordinance.

§ 307. When Effective.

[Ord. 2019, 4/10/2006]

This Part and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take effect and be in full force and effect immediately upon enactment.

Chapter 5. Code Enforcement

Part 7. RESIDENTIAL RENTAL REGISTRATION

§ 701. Residential Rental Registration Required.

[Ord. 1944, 8/12/2002, § 5; as amended by Ord. 2137, 6/8/2015]

The owner(s) of each residential rental property shall register the rental property with the Department of Licensing and Inspections on or before June 30, 2003. There shall be no rental registration fee for rental property registered prior to February 28, 2003. Rental registration fees for properties subsequent to February 28, 2003, shall be established by Borough Council, from time to time, by resolution. For newly created residential rental units, registration shall occur prior to any occupancy.

§ 702. Information to Be Provided.

[Ord. 1944, 8/12/2002, § 5; as amended by Ord. 2137, 6/8/2015]

Registration forms shall be available in the Department of Licensing and Inspections. Information required to be submitted shall include, but not be limited to, the following:

- A. Name, address and telephone number of the property owner.
- B. Address and location of the residential rental unit or units.
- C. Name, address and telephone number of the rental agent (if applicable).
- D. Number of residential rental units located in the residential rental property.
- E. Identification and description of each residential rental unit.
- F. Additional information deemed necessary by the Director of Licensing and Inspections to administer the registration process.

§ 703. Registration Effectuated; Frequency of Registration.

[Ord. 1944, 8/12/2002, § 5; as amended by Ord. 2137, 6/8/2015]

1. Registration shall be deemed complete when the owner has submitted the information required in § 702 above to the Department of Licensing and Inspections; a Certification of Registration shall be issued by the Department of Licensing and Inspections evidencing said registration of all residential rental units contained in the residential rental property.
2. Once a residential rental property is registered with the Department of Licensing and Inspections, subsequent registration is required when there is a change to the number of residential rental units within a residential rental property.

§ 704. Effective Date.

[Ord. 1944, 8/12/2002, § 5]
This Part shall become effective October 1, 2002.

Chapter 5. Code Enforcement

PART 8. RESIDENTIAL RENTAL LICENSING

§ 801. Residential Rental License Required for Residential Rental Units.

[Ord. 1944, 8/12/2002, § 6; as amended by Ord. 2078, 10/12/2010, § 8; and by Ord. 2137, 6/8/2015]

A residential rental license, as more specifically defined and described in Part 2, Registration and Licensing of Residential Rental Units, of Chapter 11, Housing, shall be required for each residential rental unit biennially (at least once every 24 months), unless the residential rental unit is exempt as defined in § 204 of Chapter 11 or is a short-term rental unit.^[1] Short-term residential rental units shall continue to require an annual inspection.

- A. For licensing purposes, the Licensing and Inspections Officer shall fully inspect each residential rental unit biennially, upon a property transfer, upon a complaint that a violation has occurred, or where the Licensing and Inspections Officer has reasonable cause to believe that a violation is occurring.
- B. Prior to initial occupancy of newly constructed or newly created or substantially rehabilitated residential rental units, the owner, operator, responsible agent or manager of each residential rental unit shall register with and make application to the Licensing and Inspections Officer for a residential rental license as herein provided. Such unit will be exempt from further inspection, unless a complaint of violation has occurred, or a code enforcement officer has probable cause to believe that a violation has occurred, or in the event of a property transfer. Absent property transfer or complaint of violation, it is the intent of this section to inspect all residential rental units biennially. Initial inspections will occur in accordance with a phased-in systematic inspection program to be prepared and made available upon request by the Department of Licensing and Inspections. The penalty for not allowing an inspection shall be revocation of the residential rental registration and/or the residential rental license.

[1] *Editor's Note: Section 12 of Ord. 2137 provided: "Notwithstanding anything to the contrary contained in this ordinance, the initial cycle for the first biennial inspection will be for a period of 30 months and begin July, 1, 2015, and conclude December 31, 2017. During this 30 months, a change in tenancy in any residential rental unit shall require an inspection of the residential rental unit. Thereafter, the biennial inspection cycle shall commence January 1, 2018, as described in this ordinance and the requirement for an inspection and issuance of a residential rental license on a change in tenancy shall terminate."*

§ 802. Compliance.

[Ord. 1944, 8/12/2002, § 6; as amended by Ord. 2137, 6/8/2015]

If the Licensing and Inspections Officer, upon completion of the inspection, finds that the applicable codes have not been met, a notice of violation shall be issued.

- A. Notices of violation and the procedure for remedial action of said violations will be addressed as set forth in § 215, "Violations and Penalties," of Chapter 1, "Administration and Government," of the Code of Ordinances of the Borough of Pottstown, as amended.
- B. If, after the expiration of the notice provision or any extensions thereof, the second reinspection reveals that all violations have not been corrected, the residential rental registration or the residential rental license for the residential rental unit shall be revoked, and if the residential rental unit is vacant, it shall remain vacant.

- C. A fee will be charged for the initial inspection and for each reinspection after the second reinspection. The Department of Licensing and Inspections shall maintain a list of all residential rental units and their ownership that have been the subject of prosecution before the District Justice during the preceding five years.

§ 803. Issuance of Residential Rental License.

[Ord. 1944, 8/12/2002, § 6; as amended by Ord. 2078, 10/12/2010, § 9]

1. A residential rental license shall be issued if the residential rental unit meets the following conditions:
 - A. The Licensing and Inspections Officer finds that the residential rental unit is in compliance with the applicable codes and satisfies the requirements of § 206 in Part 2 of Chapter 11.
[Amended by Ord. 2137, 6/8/2015]
 - B. The owner, operator or manager provides the name of a designated responsible agent (if applicable).
 - C. The owner, operator, designated responsible agent or manager pays the license inspection and reinspection (if applicable) fee(s).
 - D. The owner, operator, designated responsible agent or manager is current on water, sewer and trash fees, real estate taxes, and any and all clean and lien charges for the residential rental unit.
 - E. The uses of the property are in compliance with the Zoning Ordinance [Chapter 27] of the Borough of Pottstown.
 - F. The owner, operator, designated responsible agent or manager has submitted a complete and accurate tenancy report for each residential rental unit.
 - G. The owner, operator, designated responsible agent or manager has submitted proof of a written rental agreement and proof of general liability insurance for the residential rental unit.
 - H. The owner, operator, designated responsible agent or manager has paid in full any fines and costs arising from enforcement of this Part or any of the ordinances of the Borough of Pottstown relating to land use and/or code enforcement.
2. A residential rental license shall be reissued if the residential rental unit satisfies the conditions in Subsections B through H above and has no open code violations.

§ 804. Revocation of Residential Rental License.

[Ord. 1944, 8/12/2002, § 6; as amended by Ord. 2078, 10/12/2010, § 10; and by Ord. 2137, 6/8/2015]

A residential rental license shall be revoked if the owner or operator of a residential rental unit does not provide the name of the designated responsible agent (if applicable); does not correct code violations found in response to a complaint within the time frame cited by the Licensing and Inspections Officer; is not current on water, sewer and trash fees, real estate taxes, and/or clean and lien charges for the residential rental unit; changes the uses of the property so as to no longer be in compliance with the Zoning Ordinance [Chapter 27] of the Borough of Pottstown; does not submit a complete and accurate occupant listing by residential rental unit by January 31 of each year, whenever appropriate; and/or has not complied with the disruptive conduct provision of this Part, as described in Chapter 11, § 203.3. If the residential rental license is revoked and the residential rental unit is vacant, it shall remain vacant.

§ 805. Reinstatement of Residential License.

[Ord. 1944, 8/12/2002, § 6; as amended by Ord. 2078, 10/12/2010, § 11]

A residential rental license shall be reinstated if the owner or operator of a residential rental unit corrects all the reasons for the revocation of the residential rental license, has paid the license reinstatement fee, and has

provided to the Borough a security deposit in the amount of \$500 to be held by the Borough, for the following twelve-month period, to ensure compliance with all Borough ordinances and to further ensure timely payment of all water, sewer and trash fees, real estate taxes and clean and lien charges. At the conclusion of the twelve-month period, if the owner or operator of the residential rental unit is in compliance with all Borough ordinances and has paid timely all water, sewer, trash fees, real estate taxes, and clean and lien charges, the security deposit shall be refunded to the owner.

§ 806. Sale or Transfer of Residential Rental Unit.

[Ord. 1944, 8/12/2002, § 6]

A residential rental license shall not be transferred. In the case of licensed residential rental units that are sold or transferred, the new owner shall apply for a residential rental license for each residential rental unit and each residential rental unit inspected. Failure to seek a residential rental license for each residential rental unit within 60 days of the date of sale or transfer of ownership shall result in revocation of the residential rental license.

§ 807. Appeals of Revocation of Residential Rental License.

[Ord. 1944, 8/12/2002, § 6; as amended by Ord. 2137, 6/8/2015]

1. Property Condition Appeals. Any person aggrieved by any decision of the Licensing and Inspections Officer may appeal to the Code Hearing Board in accordance with the provision of Chapter 1, Administration and Government, Part 2, § 216, Establishment of Code Hearing Board; Variances and Appeals.
2. Disruptive Conduct Appeals. Any person aggrieved by any decision of the Licensing and Inspections Officer in regard to a disruptive conduct report or the revocation of a residential rental license based upon disruptive conduct violations, may appeal to the Disruptive Conduct Board of Appeals. Such appeal must be filed, in writing, within 30 working days from the date of the alleged disruptive conduct or notice of revocation. The Code Hearing Board shall serve as the Disruptive Conduct Board of Appeals and shall follow the procedure for hearings and appeals as set forth in Chapter 1, § 216(4) of the Code of Ordinances of the Borough of Pottstown.

§ 808. Effective Date.

[Ord. 1944, 8/12/2002, § 6]

This Part shall become effective June 1, 2003.

§ 809. Fees: Penalties.

[Ord. 1944, 8/12/2002, § 7]

1. Residential Rental License and Registration Fees. All fees established in this Part shall be set by resolution of Borough Council from time to time. The applicable types of fees are as follows:
 - A. Registration. The fee for a residential rental registration as set forth and required by § 701 above.
 - B. Licensing. The fee required for a residential rental license which shall be payable per each residential rental unit.
 - C. Reinspections. The fee for any subsequent inspection and all subsequent reinspections per residential rental unit.
 - D. Reinstatement. The fee to reinstate a revoked residential rental registration or a residential rental license on a per residential rental unit basis.
2. Penalties.

- A. Revocation of Residential Rental Registration or Residential Rental License. A fine of not less than \$600 per residential rental unit for each month the violation exists. Each month the violation exists constitutes a separate violation. A fine shall not be sought for any period during which the residential rental unit is vacant and the owner, operator, responsible agent or manager is taking appropriate action to correct the violations.
- B. Failure to Register or Failure to Seek a Residential Rental License. Failure to register or failure to seek a residential rental license (for newly constructed, newly created or substantially rehabilitated residential rental units):
- (1) The owner, responsible agent or manager shall be sent a thirty-day notice of violation, warning them of their failure to comply with the terms of this Part. If they do not comply at the end of 30 days, there shall be a fine of not less than \$600 per residential rental unit for each month the violation exists. Each month the violation exists constitutes a separate violation.
 - (2) Whoever violates any provision of this Part or any Section of this Part shall upon a first offense be fined not more than \$1,000 or imprisoned not more than 90 days, or both.
 - (3) If, after any conviction for violation of this Part or any lawful order issued pursuant thereto, such person continues violation, then such person shall be liable for further prosecution, conviction and punishment without any necessity of the Licensing and Inspections Officer to issue a new notice of violation or order, and until such violation has been corrected.
[Amended by Ord. 2137, 6/8/2015]
 - (4) In addition to prosecution of persons violating this Part, the Licensing and Inspections Officer or any duly authorized agent of the Borough may take such civil or equitable remedies in any court of record of the Commonwealth of Pennsylvania, against any person or property, real or person, to effect the provisions of this Part.
[Amended by Ord. 2137, 6/8/2015]

Chapter 11. Housing

PART 1. TENANCY REPORTS

§ 101. Owners and Rental Agents Responsible for Reports.

[Ord. 2078, 10/12/2010]

Every owner and/or rental agent of any and all apartment buildings, mobile home parks, or any and all rental and leased residential properties, situate within the Borough, are required, on or before April 1, 1993, to submit to the Borough of Pottstown, on forms provided by the Borough, the number of parcels or units, including location, then being leased or available for lease, the name or names and mailing address of all renters or leasees over the age of 18 years occupying the said rental units or parcels, and other information the Borough deems necessary. The forms described in this section are collectively referred to as "tenancy reports."

§ 102. Submission of Annual Tenancy Report.

[Ord. 2078, 10/12/2010]

The property owner and/or rental agent is further required to file, annually, a completed tenancy report on or before January 31 of each year.

§ 103. Penalty for Violation.

[Ord. 2078, 10/12/2010]

Any person (which shall include any individual, partnership, association or corporation) convicted of a violation of any provisions or requirements of this Part shall be sentenced to a fine or penalty of not less than \$250 and not exceeding \$1,000, plus costs, and in default of payment of said fine and costs to a term of imprisonment not to exceed 30 days. For the purpose of this Section, the failure to submit the required tenancy report for each apartment building, mobile home park or other rental or leased residential property shall be a separate offense. Enforcement of this Part shall not begin until December 1, 2010.

PART 2. REGISTRATION AND LICENSING OF RESIDENTIAL RENTAL UNITS

§ 201. Purpose.

[Ord. 1944, 8/12/2002, § 1]

1. The purpose of this Part and the policy of the Borough of Pottstown shall be to protect and promote the public health, safety and welfare of its citizens, to establish rights and obligations of owners and occupants relating to residential rental units in the Borough and to encourage owners and occupants to maintain and improve the quality of life and quality of rental housing within the community. As a means to these ends, this Part provides for a systematic inspection program, registration and licensing of residential rental units and penalties.

2. In considering the adoption of this Part, the Borough makes the following findings:
- A. There is a growing concern in the community with the appearance and physical condition of many residential rental units.
 - B. There is a perception and appearance of greater incidence of problems with the maintenance and upkeep of residential properties which are not owner occupied as compared to those that are owner occupied.
 - C. There are a significant number of disturbances at residential rental units.
 - D. Violations of the various maintenance codes are generally less severe and more quickly corrected at owner-occupied units as compared to residential rental units.

§ 202. Definitions.

[Ord. 1944, 8/12/2002, § 2]

As used in this part, the following terms shall have the meanings indicated:

AGENT

Any person designated by the owner who has charge, care or control of a residential rental property.

CLEAN AND LIEN CHARGES

Charges imposed against the residential rental property related to health and safety services performed by the municipality, including, but not limited to, grass and weed cutting, snow and ice removal, trash and debris removal, and the securing of structures.

[Added by Ord. 2078, 10/12/2010]

CODE

Any State or local code or ordinance adopted, enacted or in effect in and for the Borough of Pottstown including, but not limited to, the BOCA National Building Code, the BOCA Plumbing Code, the BOCA Mechanical Code, the National Electrical Code, the BOCA Fire Prevention Code, the BOCA Property Maintenance Code, and the Pottstown Borough Zoning Ordinance [Chapter 27], and/or other future national or international codes and/or zoning ordinance amendments that may be subsequently adopted.^[1]

DESIGNATED RESPONSIBLE AGENT

An adult individual residing within the Borough designated by the owner of a residential rental unit pursuant to §203 herein. The designated responsible agent shall be the agent of the owner for service of process and receiving notices of demand to perform the obligations of the owner under this part and under rental agreements with the occupant.

[Added by Ord. 2078, 10/12/2010]

DISRUPTIVE CONDUCT

Any form of conduct, action, incident or behavior perpetrated, caused or permitted by any occupant or visitor of a residential rental unit that is so loud, untimely (as to hour of the day), offensive, riotous or that otherwise disturbs other persons of reasonable sensibility in their peaceful enjoyment of their premises or causes damage to said premises such that a report is made to the Borough Authorities, a police officer and/or a Borough Licensing and Inspections Officer complaining of such conduct, action, incident or behavior. It is not necessary that such conduct, action, incident or behavior constitute a criminal offense, nor that criminal charges be filed against any person in order for said person to have perpetrated, caused or permitted the commission of disruptive conduct, as defined herein. Provided, however, that no disruptive conduct shall be deemed to have occurred unless a Licensing and Inspections Officer and/or a police officer shall investigate, and a Licensing and Inspections Officer makes a determination that such did occur, and keep written records, including a disruptive conduct report, of such occurrences.

[Amended by Ord. 2137, 6/8/2015]

DISRUPTIVE CONDUCT REPORT

A written report of disruptive conduct on a form to be prescribed therefore, to be completed by the Licensing and Inspections Officer and which shall be maintained by the Licensing and Inspections Office. The tenant and the owner, operator, responsible agent or manager shall be notified of any such occurrences, in writing. The tenant and the owner, operator, responsible agent or manager shall receive a copy of the disruptive conduct report or written notice that disruptive conduct has occurred.
[Amended by Ord. 2137, 6/8/2015]

HOTEL UNIT

Any room or group or rooms located within a hotel or motel forming a single habitable unit used or intended to be used for living and sleeping only on a transient basis for a period of less than 30 days.

RENTAL AGREEMENT(S)

A written agreement between the owner/landlord and occupant/tenant supplemented by the addendum or some other document determined, in writing, to be reasonably acceptable to the Borough as required under §203 of this Part, embodying terms and conditions concerning the use and occupancy of a specified regulated rental unit or premises.

[Added by Ord. 2078, 10/12/2010]

RESIDENTIAL RENTAL LICENSE

A document issued by the Licensing and Inspections Office, on an annual basis, to the owner, operator, responsible agent or manager of a residential rental unit upon compliance with all applicable codes granting permission to operate a residential rental unit in the Borough of Pottstown. Such license is required for lawful rental to third parties and occupancy by third parties of any rental units under this Part, unless the residential rental unit is exempt from the license provisions of this Part.

[Amended by Ord. 2078, 10/12/2010, § 3; and by Ord. 2137, 6/8/2015]

RESIDENTIAL RENTAL PROPERTY

Any parcel of real estate identified by a tax parcel number containing at least one residential rental unit.

RESIDENTIAL RENTAL REGISTRATION

The document issued by the Licensing and Inspections Department of the Borough of Pottstown to the owner of a parcel of land containing at least one residential rental property evidencing the existence of said residential rental unit(s). This registration shall be required until the Licensing and Inspections Officer inspects the unit and issues a residential rental license for each residential rental unit. A residential rental registration shall continue to be required for lawful rental and occupancy of residential rental units under this Part, unless a Licensing and Inspections Officer has inspected the building containing at least one residential rental property and has issued a residential rental license(s) or the residential rental unit is exempt from the registration provisions of this Part. This registration does not warrant the proper zoning, habitability, safety or condition of the residential rental unit in any way.

[Amended by Ord. 2137, 6/8/2015]

RESIDENTIAL RENTAL UNIT

A rooming unit or dwelling unit let for rent, or a rooming unit or dwelling unit occupied by someone other than the owner. A residential rental unit includes dwelling units under lease purchase agreements or long-term (greater than six months) agreements of sale. Residential rental units are further classified as follows:

[Amended by Ord. 2137, 6/8/2015]

A. SINGLE-FAMILY UNIT

A residential rental unit that is not categorized as a short-term rental unit or as an apartment.

B. APARTMENT

A suite of rooms in a building or structure containing at least two other such dwellings, each intended to be used as an independent housekeeping unit for one family with separate cooking, food storage, bathing and toilet facilities with access directly or by a common hallway and/or stairs to the outside.

C. APARTMENT UNIT

A dwelling unit within an apartment.

[1] Editor's Note: See Chapter 5, Code Enforcement, and § 211 of Chapter 1.

§ 203. Owner and Occupant Duties.

[Ord. 1944, 8/12/2002, § 3]

1. Owner's Duties.

- A. It shall be the duty of every owner, operator, responsible agent or manager to keep and maintain all residential rental units in compliance with all applicable codes and provisions of all applicable State laws and regulations and local ordinances and to keep such property in good and safe condition and to be aware of, and to act to eliminate, disruptive conduct in such residential rental units.
 - B. It shall be unlawful for any person, as owner, operator, responsible agent or manager to conduct or operate or cause to rent any residential rental unit within the Borough of Pottstown without having a residential rental registration.
 - C. Every owner, operator, or designated responsible agent shall include the amendment attached hereto as an addendum to the rental agreement in each lease of the residential rental unit taking affect on or after January 1, 2003. Said amendment is hereby considered to be a part of every written rental agreement unit in the Borough of Pottstown executed on or after January 1, 2003, and said amendment shall be posted conspicuously in each residential rental unit. In addition, every owner, operator, or designated responsible agent shall comply with the requirements set forth in Subsection G below, as it relates to the written rental agreement.
[Amended by Ord. 2078, 10/12/2010, § 5]
 - D. Every owner, operator, responsible agent or manager shall display the residential rental registration or residential rental license in each residential rental unit. The residential rental registration or residential rental license shall include the following information:
 - (1) The name, mailing address and telephone number of the owner, operator, responsible agent or manager.
 - (2) The evenings and hours on which garbage and recycling are to be placed curbside for collection.
 - (3) The telephone number to call to register complaints regarding the physical condition of the residential rental unit.
 - (4) The telephone number for emergency police, fire and medical services.
 - (5) The date of expiration of the residential rental license.
 - (6) A summary of the owner's and occupant's duties under this Part.
 - E. It shall be the responsibility of every owner, operator, responsible agent or manager to employ policies and to manage the residential rental units under his/her control in compliance with the provisions of this part, Borough codes and applicable State laws.
 - F. No residential rental registration or residential rental license shall be issued to any residential rental unit owned or operated by a person residing outside the Borough of Pottstown (hereinafter referred to as "absentee owner/operator") unless there is provided to the Licensing and Inspections Office the name, mailing address, actual street address, telephone number, fax number and e-mail address of a designated responsible agent residing or working within the Borough of Pottstown authorized to accept service of process on behalf of the legal owner of said residential rental unit. For the purposes of this Section, a post office box is not acceptable for the designated responsible agent's address.
[Amended by Ord. 2078, 10/12/2010, § 6; and by Ord. 2137, 6/8/2015]
- (1) The designation of the designated responsible agent shall not be valid unless signed by the absentee owner/operator and the designated responsible agent to act on behalf of the absentee owner/operator. The absentee owner/operator shall be required to notify the Licensing and Inspections Office within 15 days of any change in the identity of the designated responsible agent.

- (2) Absentee owner/operators residing outside the Borough of Pottstown but within a five-mile radius of Pottstown Borough and meeting the following criteria shall be exempt from naming a designated responsible agent:
 - (a) No cases of three disruptive conduct complaints within a twelve-month period regarding the same occupants of a particular residential rental unit, as documented by upheld or unappealed disruptive conduct reports.
 - (b) All real estate taxes, water, sewer, trash fees, and clean and lien charges relating to the rental property paid in full by December 31 of the preceding year.
 - (c) The residential units shall pass inspection at the first reinspection, both interior and exterior of the property must be in compliance with all codes (there will be an allowance for exterior repairs for the time of the year).
 - (d) The owner, operator or designated responsible agent must have corrected any code violations cited within 30 days.
- G. Every owner, operator, or designated responsible agent shall comply with the following requirements relating to written rental agreements:

[Added by Ord. 2078, 10/12/2010]

 - (1) All rental agreements for residential rental unit(s) shall be in writing and shall be supplemented with the addendum attached hereto as Appendix A^[1] or by some other document determined, in writing, to be reasonably acceptable to the Borough. No oral leases and no oral modifications thereof are permitted. All disclosures and information required to be given to the occupant(s) by the owner shall be furnished before the signing of the rental agreement. The owner shall provide the occupant(s) with copies of the rental agreement and addendum (or other document approved by the Borough) upon execution.

[1] *Editor's Note: Appendix A is on file in the office of the Borough Secretary.*
 - (2) Terms and Conditions. The owner and the occupant(s) may include in a rental agreement terms and conditions not prohibited by this Part or other applicable ordinances, regulations and laws, including rent, term of the agreement, and other provisions governing the rights and obligations of the parties.
 - (3) Prohibited Provisions. Except as otherwise provided by this Part, rental agreements may provide that the occupant(s) or the owner(s) agree to waive or to forego rights or remedies under this Part. A provision prohibited by this subsection included in a rental agreement is unenforceable.
 - (4) Attachment of Summary of Part to Rental Agreement. Following the effective date of this Part, and unless otherwise approved in writing by the Borough, a summary hereof in a form provided to the owner by the Borough at the time of licensing shall be attached to each rental agreement delivered by or on behalf of an owner when such agreement is presented for signing by an occupant. If a summary has been provided when the rental agreement was first executed, a summary does not have to be provided upon renewal. Where a rental agreement has been entered into prior to the effective date of this Part, the owner shall provide the occupant(s) with a copy of the summary within 60 days after enactment of this Part.
 - (5) Written Acknowledgment. Unless otherwise approved in writing by the Borough, the owner shall secure a written acknowledgment from the occupant(s) that the occupant(s) have received the disclosure and information required by this Part.
 - (6) Provide Acknowledgment. Unless otherwise approved in writing by the Borough, upon oral or written request by the Borough of Pottstown, the owner, within 10 days of the request, shall furnish the Borough copies of the acknowledgment that the occupant(s) received the disclosures and information required by this Part.
 - (7) Provide Rental Agreement(s). Upon oral or written request by the Borough of Pottstown, the owner, within 10 days of the request, shall furnish to the Borough for inspection purposes only,

copies of the rental agreement(s) the owner has entered into for the residential rental unit(s).

H. Enforcement Procedures by Owner.

[Added by Ord. 2078, 10/12/2010; as amended by Ord. 2137, 6/8/2015]

- (1) Within 10 days after receipt of written notice from the Licensing and Inspections Office that an occupant of a residential rental unit has violated a provision of this Part, the owner shall take immediate steps to remedy the violation and take steps to assure that there is not a reoccurrence of the violation.
- (2) Within 20 days after receipt of a notice of violation, the owner shall file with the Licensing and Inspections Officer a report (on a form provided by the Borough) setting forth what action the owner has taken to remedy the violation and what steps he or she has taken to prevent the reoccurrence of the violation. The report shall also set forth a plan as to steps the owner will take in the future if the violation reoccurs.
- (3) The Licensing and Inspections Officer shall review the report and, if adequate steps have been taken, and the plan is adequate to address future violations, shall approve the plan. If the Licensing and Inspections Officer does not approve the plan, the Licensing and Inspections Officer shall provide to the owner, in writing, the reason why the plan is not acceptable. The owner shall, on his or her initiative, enforce the plan and failure to do so shall be a violation of this Part.
- (4) In the event that a second violation occurs within the license year involving the same occupant(s), the Licensing and Inspections Officer may direct the owner to evict the occupant(s) who violated this Part and to not permit the evicted occupant(s) to occupy the premises during the subsequent licensing period.

I. Enforcement Regulations of Borough. In addition to any fines that can be imposed under §809 of Chapter 5, Code Enforcement, the Borough shall be permitted to take the following action to ensure enforcement of this Part:

[Added by Ord. 2078, 10/12/2010; as amended by Ord. 2137, 6/8/2015]

- (1) Code Violations. Upon receiving notice of any code violations from the Licensing and Inspections Officer, the owner shall promptly take action, or cause the necessary action to be taken, to abate the offending condition and eliminate the violation.
- (2) Borough Can Make Repairs. In the case where the owner of the premises shall neglect, fail or refuse to comply with any notice from the Borough or its Licensing and Inspections Officer to correct a health or safety violation relating to maintenance and repair of the premises under any code(s) within the period of time stated in such notice, the Borough may cause the violation to be corrected. There shall be imposed upon the owner a charge of the actual costs involved, plus 10% of said costs for each time the Borough shall cause a violation to be corrected, and the owner of the premises shall be billed after same has been completed (clean and lien charge). Any such bill remaining unpaid and outstanding after the time specified therein for payment shall be grounds for the imposition of a municipal lien upon the premises as provided by law. Such a lien may be reduced to judgment and enforced and collected as provided by law, together with interest at the legal rate and court costs. The remedies provided by this paragraph are not exclusive and the Borough and its Licensing and Inspections Officer may invoke such other remedies available under this Part or other applicable codes, ordinances or statutes, including, where appropriate, condemnation proceedings or declaration of premises as unfit for habitation or suspension, revocation or nonrenewal of the license issued hereunder.
- (3) Inspection of Premises. The owner shall permit inspections of the premises by the Licensing and Inspections Officer at reasonable times upon reasonable notice. If the owner does not permit such inspection of the premises by the Licensing and Inspections Officer, the Licensing and Inspections Officer may apply a administrative warrant to inspect the premises.

J. Duties of Occupants.

[Added by Ord. 2078, 10/12/2010]

- (1) General. The occupant(s) shall comply with all obligations imposed upon the occupant(s) by this Section, all applicable codes and ordinances of the Borough and all applicable provisions of State law.
 - (a) The maximum number of persons permitted in any residential rental unit at any time shall not exceed one person per each 40 square feet of habitable floor space in said residential rental unit. The maximum number of persons permitted in the common area of any multiple unit dwelling at any time shall not exceed one person for each 15 square feet of common areas on the premises.
 - (b) The occupant(s) shall dispose from their residential rental unit all rubbish, garbage and other waste in a covered trash container and separate and place for collection all recyclable materials in compliance with the trash and recycling ordinances of the Borough.
 - (c) The occupant(s) shall, unless otherwise permitted by applicable law or ordinance, occupy or use the residential rental unit for no other purpose than as a residence.
 - (d) The occupant(s) shall not engage in nor tolerate nor permit others on the premises to engage in any conduct declared illegal under the Pennsylvania Crimes Code (18 Pa.C.S.A. § 101 et seq.), the Liquor Code (47 P.S. § 1-101 et seq.), or the Controlled Substance, Drug, Device and Cosmetic Act (35 P.S. § 780-101 et seq.).

2. Occupant Duties.

- A. The occupant(s) shall comply with all obligations imposed by this Part and all applicable codes and ordinances of the Borough of Pottstown, as well as all State laws and regulations.
- B. The occupant(s) shall conduct themselves and require other persons including, but not limited to, guests on the premises and within their residential rental unit with their consent, to conduct themselves in a manner that will not disturb the peaceful enjoyment of the premises by others and that will not disturb the peaceful enjoyment of adjacent or nearby dwellings by people occupying the same.
- C. The occupant(s) shall not engage in, nor tolerate nor permit others on the premises to cause damage to the residential rental unit or engage in disruptive conduct, or other violations of this Part, Borough codes or applicable State laws.

3. Disruptive Conduct Procedure.

[Amended by Ord. 2137, 6/8/2015]

- A. Police officers and/or Licensing and Inspections Officers shall investigate alleged incidents of disruptive conduct. The Licensing and Inspections Officer shall complete a disruptive conduct report upon a reasonable finding that the reported incident constitutes disruptive conduct as defined herein. The information filed in said report shall include, if possible, the residential rental unit, the residential rental property, a description of the alleged disruptive conduct, the identity of the alleged perpetrator(s) of the disruptive conduct and all other obtainable information, including the factual basis for the disruptive conduct described on the prescribed form. A copy of the disruptive conduct report shall be given or mailed to the occupant and mailed to the owner, operator, responsible agent or manager within 20 working days of the occurrence of the alleged disruptive conduct.
- B. The occupant or the owner, operator, responsible agent or manager shall have 30 working days from the date of the alleged disruptive conduct to appeal the contents of said disruptive conduct report. The appeal shall be made in writing and submitted to the Licensing and Inspections Office. An appeal of the third disruptive conduct report within a twelve-month period shall stay the eviction proceedings against the occupants until the appeal is resolved, only if the eviction proceedings were a direct result of the third disruptive conduct report.
- C. After three unappealed or unsuccessfully appealed disruptive conduct incidents (or any combination thereof) in any twelve-month period by an occupant documented by disruptive conduct reports, the owner, operator, responsible agent or manager shall have 10 working days from the date of his/her receiving the notice to begin eviction proceedings against the occupants. Failure to take such action will result in the immediate revocation of the residential rental license. The residential rental unit involved

shall not have its residential rental license reinstated until the reinstatement fee is paid and the disruptive occupants have been evicted, the district justice has ruled in the occupant's favor, or the district justice has ruled in the owner's favor but has not ordered the eviction of the occupant(s), or the occupants have filed an appeal to a higher court thereby preventing their eviction. The disruptive occupants, upon eviction, shall not reoccupy any residential rental unit on the same residential rental property involved for a period of at least one year from date of eviction. This subsection is not intended to limit or inhibit the owner, operator, responsible agent or manager's right to initiate eviction actions prior to the third disruptive conduct incident or otherwise as permitted by law.

- D. The content of the disruptive conduct report shall count against all occupants of the residential rental unit. More than one disruptive conduct report filed against any occupant of a residential rental unit in a twenty-four-hour period shall count as a single disruptive conduct report for the purpose of the preceding subsection. The Licensing and Inspections Office shall maintain a list of the names of all occupants evicted as a result of the preceding subsection. The names shall remain on the list for a period of five years and shall be considered a public record under the Pennsylvania Right-to-Know Law.

§ 204. Exempt Units.

[Ord. 1944, 8/12/2002, § 4]

1. The registration and licensing provisions of this Part shall not apply to hospitals, nursing homes, group homes or other rental units used for human habitation which offer or provide licensed medical or nursing services and wherein all operations of such facilities are subject to County, State or Federal licensing or regulations concerning the health and safety of the users, patients or tenants. The registration and licensing provisions of this Part also shall not apply to hotel units, as defined previously, or dormitories, fraternity houses and sorority houses, as defined in the Borough's Zoning Ordinance [Chapter 27].
2. If, in response to a complaint, an exempt unit is found to be in violation of a Borough code, the owner operator, responsible agent or manager shall correct the violation(s) within the time frame cited by the Licensing and Inspections Officer. If the violation(s) is/are not corrected, the unit shall lose its exemption until the violation(s) is/are corrected. If three verified complaints are received in any twelve-month period, the unit shall lose its exemption for a period of five years.

[Amended by Ord. 2137, 6/8/2015]

3. This exemption does not apply to the disruptive conduct provisions of this Part as describe above.

§ 205. Procedure for Applying for Residential Rental License.

[Ord. 2137, 6/8/2015]

1. All owners of residential rental property shall initially submit a complete residential rental license application to the Borough Licensing and Inspections Department on or before September 1, 2015. Thereafter, a complete residential rental license application to the Borough Licensing and Inspections Department shall be submitted on or before March 15 of each even-numbered calendar year beginning in 2018. A separate residential rental license application shall be required for each residential rental property identifying each residential rental unit. Every residential rental license application shall be accompanied by a residential rental license application fee, in an amount determined by Borough Council from time to time by resolution, along with a copy of the lease for the residential rental unit if requested by the Licensing and Inspections Department.
2. The Licensing and Inspections Department shall schedule inspections of residential rental units with a minimum of 10 days' advance notice. Nothing in this section shall be deemed to limit or restrict the ability of the Borough to conduct inspections of any residential rental unit as deemed necessary to enforce any part of the Code of the Borough of Pottstown or the laws of the Commonwealth. The applicant is responsible for scheduling of the inspection and payment of any and all costs of the inspection (hereinafter referred to as the "inspection fee"), as fixed from time to time by resolution of the Borough Council.

3. Upon submission of a residential rental license application, the Licensing and Inspections Department shall perform an inspection of the residential rental unit to insure that the residential rental unit meets all of the requirements of the Code of the Borough of Pottstown, including, but not limited to, the International Property Maintenance Code, the Uniform Construction Code, the Fire Prevention Code, the Zoning Ordinance, the terms and conditions of this section, and any other applicable provisions of the Code of the Borough of Pottstown or the laws of the Commonwealth.
4. Upon successful completion of all requirements of this Part, the Licensing and Inspections Department shall issue an appropriate residential rental license. Residential rental units which fail to meet the requirements of this Part shall not qualify for the issuance of a residential rental license unless the residential rental unit is brought into compliance with this Part. A reinspection fee shall be paid by the owner seeking a second or subsequent inspection under any application for a residential rental license prior to the licensing and Inspections Department conducting such reinspection. The inspection fee shall be as fixed from time to time by resolution of the Borough Council.

§ 206. Biennial Annual Inspection Required.

[Ord. 2137, 6/8/2015]

1. Beginning July 1, 2015, and continuing thereafter, property subject to a residential rental license under this Part shall be inspected as provided herein biennially.^[1] The Licensing and Inspections Department shall have discretion to schedule inspections of licensed properties consistent with this Part. Failure to comply with a notice from the Licensing and Inspections Department regarding the scheduling or conduct of a mandatory biennial inspection under this Part may result in suspension and revocation of the residential rental license.
[1] *Editor's Note: Section 12 of Ord. 2137 provided: "Notwithstanding anything to the contrary contained in this ordinance, the initial cycle for the first biennial inspection will be for a period of 30 months and begin July, 1, 2015, and conclude December 31, 2017. During this 30 months, a change in tenancy in any residential rental unit shall require an inspection of the residential rental unit. Thereafter, the biennial inspection cycle shall commence January 1, 2018, as described in this ordinance and the requirement for an inspection and issuance of a residential rental license on a change in tenancy shall terminate."*
2. Any residential rental unit proposed to be issued a residential rental license, in addition to any other relevant requirements, must demonstrate compliance with the following standards;
 - A. Each habitable unit must have at least one habitable room of not less than 120 square feet.
 - B. All spaces, other than kitchens and bathrooms, must contain a minimum of 70 square feet to be considered habitable spaces.
 - C. Bedrooms must contain a minimum of 70 square feet plus an additional 50 square feet for each additional person occupying the same room.
 - D. No basement space may be considered habitable unless it meets the requirements for secondary means of egress/escape as defined by the applicable Borough Building or Property Maintenance Code.
3. To the greatest extent practical, the Licensing and Inspections Department shall stagger the inspection of the residential rental units throughout the twenty-four-month period.
4. Residential rental licenses shall be valid for a period of 24 months and may be renewed upon application. All residential rental units seeking renewal of a residential rental license must comply with all terms and conditions of this Part.
5. Residential rental licenses shall not be subject to transfer or assignment to any new owner of any residential rental property.