

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA

DOROTHY RIVERA

vs.

BOROUGH OF POTTSTOWN

NO. 2017-04992

COVER SHEET OF MOVING PARTY

Date of Filing June 21 2018

Moving Party BOROUGH OF POTTSTOWN; KEITH PLACE

Counsel for Moving Party SHERYL L BROWN, Esq., ID: 59313; CHRISTINE D STEERE, Esq., ID: 84066

Document Filed (Specify) MOTION FOR JUDGMENT ON THE PLEADINGS

Matter is (Check One) ☐ (Appealable) ☒ (Interlocutory)

Discovery Needed ☐ (Yes) ☒ (No)

CERTIFICATIONS - Check ONLY if appropriate:

Counsel certify that they have conferred in a good faith effort to resolve the subject discovery dispute.
(Required by Local Rule 208.2(e) on motions relating to discovery.)

☐ (Yes) ☐ (No) ☒ (Not a Discovery Motion)
☐ Counsel for moving party certifies that the subject **civil motion** is **uncontested** by all parties involved in the case.
(If checked, skip Rule to Show Cause section below.)

By: _____
Counsel for Moving Party

RULE TO SHOW CAUSE - Check ONE of the Choice Listed Below:

____ Respondent is directed to show cause why the moving party is not entitled to the relief requested by filing
an **answer** in the form of a **written response** at the **Office of the Prothonotary** on or before the
_____ day of _____, 20 ____

____ Respondent is directed to show cause, in the form of a **written response**, why the attached Family
Court Discovery Motion is not entitled to the relief requested. Rule Returnable and Argument the _____ day of
_____, 20 ____ at **1:00 p.m. at 321 Swede Street, Norristown, Pa.**

____ Respondent is directed to file a **written response** in conformity with the Pennsylvania Rules of Civil Procedure
____ Rule Returnable at time of trial.

By: _____
Court Administrator

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 MOTION
FOR JUDGMENT ON THE PLEADINGS PURSUANT TO P.A.R.CIV.P. 1034

Defendants, Borough of Pottstown and Keith A. Place ("Pottstown Defendants"), by and through their attorneys, Siana, Bellwoar & McAndrew, LLP, hereby move for Judgment on the Pleadings pursuant to Pa.R.Civ.P. 1034, with supporting Brief that is incorporated by reference as though fully stated herein, and respectfully submit as follows:

I. PROCEDURAL HISTORY

1. 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, Complaint).

2. 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, Answer).

3. On April 25, 2017, Plaintiffs filed an Answer to New Matter. (Doc. #16).

4. On July 26, 2017, pursuant to a Stipulation, Plaintiffs filed an Amended Complaint adding factual allegations and Plaintiffs Thomas O'Connor, Kathleen O'Connor and Rosemarie O'Connor. (Doc. #20, Amended Complaint).

5. On August 15, 2017, the Pottstown Defendants timely filed Preliminary Objections to Plaintiffs' Amended Complaint, which were denied on December 14, 2017, following oral argument. (Doc. #21, 30).

6. On January 2, 2018 the Pottstown Defendants answered the Amended Complaint with New Matter. (Doc. #32).

7. On January 15, 2018, Plaintiffs filed an Answer to Defendants' New Matter. (Doc. #35).

8. The pleadings are now closed and the Pottstown Defendants timely move for Judgment on the Pleadings.

II. FACTUAL BACKGROUND

A. The Pottstown Ordinance.

9. 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. (Am. Cmplt., Doc. 20, at ¶ 12; Ans. Am. Cmplt., Doc. 32, at ¶ 12).

10. The Pottstown Ordinance is a public document. *See, e.g.*, Chapter. 5, Code Enforcement, www.ecode360.com/14219333, and Chapter 11, Housing, www.ecode360.com/14220115.

11. The stated 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.” (Ans. Am. Cmplt., Doc. 32, at ¶ 41; Ordinance, Chap. 11 § 201(1)).

12. The Ordinance “provides for a systematic inspection program, registration and licensing of residential rental units and penalties.” (Am. Cmplt., Doc. 20, at ¶ 41; Ans. Am. Cmplt., Doc. 32, at ¶ 14, 17, 41).

13. 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. (Ans. Am. Cmplt., Doc. 32, at ¶ 4, 6, 7, 17, 66, 69-71; *see* Ordinance, Chap. 11 § 201, *et seq.*, Chap. 5 §§ 701, *et seq.*, and 801, *et seq.*).

14. An owner shall permit an inspection by the Borough’s Licensing and Inspections Officer at a reasonable time with reasonable notice. (Ans. Am. Cmplt., Doc. 32, at ¶ 45, 54).

15. If the owner does not permit such inspection, an application for administrative search warrant is permitted. (Am. Cmplt., Doc. 20, at ¶ 45; Ans. Am. Cmplt., Doc. 32, at ¶ 45, 67, 72; Ordinance Chap. 11 § 203(I)(3)).

16. Failure to comply with the biennial inspection may also result in the suspension and revocation of the residential license. (Ans. Am. Cmplt., Doc. 32, at ¶ 50; Ordinance Chap. 11 § 206).

B. Plaintiffs Camburn and Rivera.

17. Plaintiff Steven Camburn owns and operates rental properties in the Borough of Pottstown, including the property located at 326 Jefferson Avenue, Pottstown, Pennsylvania, that are subject to the Borough’s licensing and registration requirements. (Am. Cmplt., Doc. 20, at ¶¶

4-5; Ans. Am. Cmplt., Doc. 32, at ¶¶ 4-5; *see* Ordinance, Chap. 5 §§ 701, *et seq.*, and 801, *et seq.*).

18. Plaintiffs Dorothy Rivera, and her husband, Eddy Omar Rivera (collectively referred to as “Rivera”), live in and rent the property located at 326 Jefferson Avenue, Pottstown, Pennsylvania from Plaintiff Camburn. (Am. Cmplt., Doc. 20, at ¶¶ 4-5; Ans. Am. Cmplt., Doc. 32, at ¶¶ 4-5).

19. The Borough provided written notice to Plaintiff Camburn that in accordance with the Pottstown Ordinance, the property located at 326 Jefferson Avenue would be inspected on March 13, 2017 at 11:00 a.m. (Am. Cmplt., Doc. 20, at ¶¶ 18-19; Ans. Am. Cmplt., Doc. 32, at ¶¶ 18-19).

20. On March 8, 2017, five (5) days before the scheduled inspection, Camburn and tenants Rivera wrote to the Borough of Pottstown Department of Licensing and Inspections objecting to a voluntary inspection, and instead required that a warrant to inspect be obtained. (Am. Cmplt., Doc. 20, at ¶ 20; Ans. Am. Cmplt., Doc. 32, at ¶ 20).

21. On March 13, 2017, the Borough applied for, and the Magisterial District Court authorized, an administrative warrant to inspect 326 Jefferson Avenue in accordance with Ordinance No. 2137. (*See* Amended Complaint, ¶ 21).

22. On the same date, the Magisterial District Court stayed the execution of the administrative warrant. (Am. Cmplt., Doc. 20, at ¶ 22; Ans. Am. Cmplt., Doc. 32, at ¶ 22).

C. Plaintiffs O’Connor.

23. Plaintiff Thomas O’Connor owns property located at 466 N. Franklin Street, Pottstown, Pennsylvania. (Am. Cmplt., Doc. 20, at ¶ 31; Ans. Am. Cmplt., Doc. 32, at ¶ 31).

24. O’Connor’s daughters, Plaintiffs Kathleen and Rosemarie O’Connor, live at the

property located at 466 N. Franklin Street, Pottstown, Pennsylvania. *Id.*

25. On March 3, 2017, the Borough informed Plaintiff O'Connor that the 466 N. Franklin Street property was due for an inspection pursuant to the Borough Ordinance and proposed the inspection occur on April 10, 2017. (Am. Cmplt., Doc. 20, at ¶¶ 34-38; Ans. Am. Cmplt., Doc. 32, at ¶ 34-38).

26. Because the O'Connors never confirmed the April 10 inspection, the Borough rescheduled the inspection for July 6, 2017. *Id.*

27. 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. (Am. Cmplt., Doc. 20, at ¶ 39; Ans. Am. Cmplt., Doc. 32, at ¶ 39-40).

III. STANDARD OF REVIEW

28. Pennsylvania Rule of Civil Procedure 1034(a) provides that “[a]fter the relevant pleadings are closed, but within such time as not to unreasonably delay the trial, any party may move for judgment on the pleadings.” Pa.R.C.P. 1034(a).

29. In determining if there is a dispute as to facts, the court must confine its consideration to the pleadings and relevant documents. *DiAndrea v. Reliance Savings and Loan Association*, 456 A.2d 1066, 1069 (Pa. Super. 1983); *Pocono Summit Realty, LLC v. Ahmad Amer, LLC*, 52 A.3d 261, 267 (Pa. Super. 2012).

30. The court also may take judicial notice of public documents. *Bykowski v. Chesed, Co.*, 625 A.2d 1256, 1258 (Pa. Super. 1993); *Solomon v. U.S. Healthcare Systems of Pennsylvania, Inc.*, 797 A.2d 346, 352 (Pa. Super. 2002).

31. The court shall 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).

IV. LEGAL ARGUMENT

A. **Pennsylvania Courts have Tacitly Approved and Applied the *Camara* Decision.**

32. The United States Supreme Court, in *Camara v. Municipal Court of San Francisco*, 387 U.S. 523, 538 (1967), held that an administrative warrant satisfies the probable cause requirement in the Fourth Amendment to the United States Constitution “if reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling.” *Id.*

33. Finding that the inspections are regulatory, not criminal, and that there was no other effective way to enforce the code, the Supreme Court held that criminal-type probable cause was an unreasonable standard for administrative warrants. *Id.* at 538.

34. Pennsylvania courts have relied upon the sound reasoning in *Camara* pertaining to the issuance of administrative warrants to conduct rental inspections. *See, e.g., Com. v. Tobin*, 828 A.2d 415 (Pa. Cmwlth. 2003); *Simpson v. City of New Castle*, 740 A.2d 287 (Pa. Cmwlth. 1999); *Green Acres Apts., Inc. v. Bristol Twp.*, 482 A.2d 1356 (Pa. Cmwlth. 1984). On each occasion, the health, welfare and safety of citizens was favored over the landlord’s rights. *Id.*

35. The Pottstown Ordinance supplies the requisite probable cause for an administrative warrant because it requires non-discriminatory, routine, periodic inspections as part of code compliance, which is consistent with both *Camara* and Pennsylvania precedent.

36. The issues raised in this Declaratory Judgment action are of a legal nature and seek to declare that the Borough’s rental inspection Ordinance violates the Pennsylvania Constitution.

B. The Pottstown Ordinance is Legally Consistent with Article I, Section 8.

37. Like the Fourth Amendment, Article 1, Section 8 of the Pennsylvania Constitution does not ban all searches and seizures; it bans *unreasonable* searches and seizures. *See* U.S. CONST. amend. IV; PA. CONST. art. I § 8; *Com. v. Miller*, 518 A.2d 1187, 1191 (Pa. 1986) (emphasis added).

38. The pleadings, along with a careful reading of the Ordinance, and particularly Chapter 11, in conjunction with the general provisions of the Property Maintenance Code, (Ordinance, § 301, *et seq.*), reflect that the Pottstown Ordinance provides adequate protections against unreasonable searches.

39. There is a clear difference between criminal searches and regulatory rental-housing inspections with advance notice.

40. First, the objective of a criminal search is inherently different than that of a regulatory rental-housing inspection. In this case, the objective of the rental-housing inspection is regulatory in nature, not criminal. (Ans. Am. Cmplt., Doc. 32, at ¶ 41; Ordinance, Chp. 11 § 201(1)).

41. Second, administrative warrants are intended for the inspection of homes or businesses to ensure compliance with health and safety codes. *Id.*; *see also Com. v. Tobin*, 828 A.2d 415, 419 (Pa. Cmwlth. 2003).

42. Finally, rental-housing inspections also are less intrusive because landlords and tenants receive advance notice. (Ans. Am. Cmplt., Doc. 32, at ¶ 45; Ordinance, Chp. 11 § 203.I(3)).

43. 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. *Com.*

v. *Moore*, 928 A.2d 1092, 1101 (Pa. Super. 2007).

44. There is no compelling reason to construe Article 1, Section 8 as providing greater rights to Pennsylvania citizens than the federal constitution since the Borough's Ordinance *does not* permit illegal inspections of rental properties because an administrative warrant is required for non-consensual searches. (Ans. Am. Cmplt., Doc. 32, at ¶ 41; Ordinance, Chp. 11 § 203(I)(3)).

C. The *Edmund* Factors Do Not Require Greater Protection for Landlords and Tenants for Rental-Housing Inspections.

45. 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)).

46. Pennsylvania courts may give weight to federal decisions where they “are found to be logically persuasive and well reasoned, paying due regard to precedent and the policies underlying specific constitutional guarantees.” *Edmunds*, 586 A.2d at 895 (*citing Commonwealth v. Tarbert*, 535 A.2d 1035, 1038 (Pa. 1987)).

47. As the Ordinance is not deemed to be unconstitutional as a matter of law, Plaintiffs' Declaratory Judgment Action likewise fails, and Defendants are entitled to judgment on the pleadings.

48. Alternatively, an analysis of the *Edmunds* factors supports the constitutionality of the Ordinance, which precludes Plaintiffs' request for Declaratory Judgment.

49. Accordingly, the Pottstown Defendants are entitled to judgment on the pleadings pursuant to Pa.R.Civ.P. 1034 as a matter of law as there are no material facts at issue.

D. Plaintiffs' Claims Against Keith Place Are Barred Pursuant to Official Immunity.

50. Mr. Place's involvement in this matter solely arises out of his status as Director of the Licensing and Inspections Department. (Am. Cmplt., Doc. 20 at ¶ 9).

51. Plaintiffs name Mr. Place *only* in his official capacity. *Id.*

52. There are no specific factual allegations against Mr. 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.*

53. The Declaratory Judgment claim asserted in Count I, is asserted *only* against the Borough, not Mr. Place. (Am. Cmplt., Doc. 20 at Count I).

54. Official immunity from civil suits pursuant to the Tort Claims Act applies to government officials when said official acts within the course and scope of their duties. *See Hecklen v. Hoffman*, 761 A.2d 207, 209 (Pa. Cmwlth. 2000); 42 Pa.C.S.A. § 8546(2).

55. Section 8546 grants official immunity for governmental employees when, *inter alia*, "the conduct of the employee which gave rise to the claim was authorized or required by law, or that he in good faith reasonably believed the conduct was authorized or required by law." *Id.*

56. Mr. Place is entitled to official immunity from Plaintiffs' claims because any conduct taken in his official capacity as the Borough's Director of the Licensing and Inspections Department is deemed to be within the scope of his official duties. *See* 42 Pa.C.S. § 8545, 8546.

57. Conversely, the Declaratory Judgment claim is asserted against the Borough, only, not Defendant Place. (Am. Cmplt, Doc. 20, Count I), and Mr. Place must be dismissed.

WHEREFORE, the Pottstown Defendants respectfully request this Honorable Court enter an Order granting their Motion for Judgment on the Pleadings, and dismiss Plaintiffs' Amended Complaint, with prejudice.

Alternatively, Defendant Place is entitled to immunity, and must be dismissed.

Respectfully Submitted,

SIANA, BELLWOAR & McANDREW, LLP

Date: June 21, 2018

By: /s/ Sheryl L. Brown

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

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

Attorneys for Defendants,

Pottstown of Pottstown and Keith A. Place

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

ORDER

AND NOW, this _____ day of _____, 2018, upon consideration of the Motion for Judgment on the Pleadings of Defendants, Borough of Pottstown and Keith A. Place, and any response thereto, it is hereby **ORDERED** and **DECREED** that said Motion is **GRANTED**. Plaintiffs' Amended Complaint is **DISMISSED** with prejudice

BY THE COURT:

, J.

SIANA, BELLWOAR & MCANDREW, LLP

By: Sheryl L. Brown, I.D. # 59313
Christine D. Steere, I.D. # 84066

941 Pottstown Pike, Suite 200
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610-321-5500

ATTORNEYS FOR DEFENDANTS

**POTTSTOWN OF POTTSTOWN
AND KEITH A. PLACE**

DOROTHY RIVERA, et al.

Plaintiffs,

v.

POTTSTOWN OF POTTSTOWN, et al.

Defendants.

:
: IN THE COURT OF COMMON PLEAS
: MONTGOMERY COUNTY, PENNSYLVANIA
:
:
: No. 2017-04992
:
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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on this day a true and correct copy of the Defendants, Pottstown of Pottstown and Keith A. Place's Motion for Judgment on the Pleadings, with supporting Brief, were filed with the Court via electronic filing, and the pleading was served via first class mail, postage prepaid, addressed as indicated:

Robert A. Peccola, Esquire (Pro Hac)
Institute for Justice
901 North Glebe Road; Suite 900
Arlington, VA 22203-1854

Michael F. Faherty, Esquire
Faherty Law Firm
75 Cedar Avenue
Hershey, PA 17033

SIANA, BELLWOAR & McANDREW, LLP

Date: June 21, 2018

By: /s/ Sheryl L. Brown

Sheryl L. Brown, Esquire, I.D. # 59313
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**ATTORNEYS FOR DEFENDANTS
BOROUGH OF POTTSTOWN
AND KEITH A. PLACE**

DOROTHY RIVERA, et al.

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: MONTGOMERY COUNTY, PENNSYLVANIA
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: No. 2017-04992
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**DEFENDANTS, BOROUGH OF POTTSTOWN AND KEITH A. PLACE'S
BRIEF IN SUPPORT OF THE MOTION FOR JUDGMENT ON
THE PLEADINGS PURSUANT TO PA.R.CIV.P. 1034**

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 Motion for Judgment on the Pleadings pursuant to Pa.R.Civ.P. 1034.

I. MATTER BEFORE THE COURT

The Pottstown Defendants file the Motion for Judgment on the Pleadings seeking the dismissal of Plaintiffs' Amended Complaint as the pleadings demonstrate that Declaratory Judgment is unwarranted 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. Is Defendant Keith A. Place 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, Plaintiffs filed an Amended Complaint adding factual allegations and Plaintiffs Thomas O'Connor, Kathleen O'Connor and Rosemarie O'Connor. (Doc. #20). On August 15, 2017, the Pottstown Defendants timely filed Preliminary Objections to Plaintiffs' Amended Complaint, which were denied on December 14, 2017, following oral argument. (Doc. #21, 30). On January 2, 2018 the Pottstown Defendants answered the Amended Complaint with New Matter. (Doc. #32). On January 15, 2018, Plaintiffs filed an Answer to Defendants' New Matter. (Doc. #35). The pleadings are now closed and the Pottstown Defendants timely move for Judgment on the Pleadings.

IV. STATEMENT OF FACTS

A. The Borough of Pottstown Rental Licensing and Inspection 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. (Am. Cmpl., Doc. 20, at ¶ 12; Ans. Am. Cmpl.,

Doc. 32, at ¶ 12). 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.” (Ans. Am. Cmplt., Doc. 32, at ¶ 41; *see* Ordinance, Chap. 11 § 201(1)).¹ The Ordinance “provides for a systematic inspection program, registration and licensing of residential rental units and penalties.” (Am. Cmplt., Doc. 20, at ¶ 41; Ans. Am. Cmplt., Doc. 32, at ¶ 14, 17, 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. (Ans. Am. Cmplt., Doc. 32, at ¶ 4, 6, 7, 17, 66, 69-71; *see* Ordinance, Chap. 11 § 201, *et seq.*, Chap. 5 §§ 701, *et seq.*, and 801, *et seq.*). An owner shall permit an inspection by the Borough’s Licensing and Inspections Officer at a reasonable time with reasonable notice. (Ans. Am. Cmplt., Doc. 32, at ¶ 45, 54). If the owner does not permit such inspection, an application for administrative search warrant is permitted. (Am. Cmplt., Doc. 20, at ¶ 45; Ans. Am. Cmplt., Doc. 32, at ¶ 45, 67, 72; Ordinance Chap. 11 § 203(I)(3)). Failure to comply with the biennial inspection may also result in the suspension and revocation of the residential license. (Ans. Am. Cmplt., Doc. 32, at ¶ 50; Ordinance Chap. 11 § 206).

B. Plaintiffs Camburn and Rivera.

Plaintiff Steven Camburn owns and operates rental properties in the Borough of

¹ The court may take judicial notice of public documents. *Bykowski v. Chesed, Co.*, 625 A.2d 1256, 1258 (Pa. Super. 1993); *Solomon v. U.S. Healthcare Systems of Pennsylvania, Inc.*, 797 A.2d 346, 352 (Pa. Super. 2002).

Pottstown, including the property located at 326 Jefferson Avenue, Pottstown, Pennsylvania.² (Am. Cmplt., Doc. 20, at ¶¶ 4-5; Ans. Am. Cmplt., Doc. 32, at ¶¶ 4-5; *see* Ordinance, Chap. 5 §§ 701, *et seq.*, and 801, *et seq.*). Plaintiffs Dorothy Rivera and Eddy Omar Rivera, h/w, live in and rent the Jefferson Avenue property from Plaintiff owner Camburn. (Am. Cmplt., Doc. 20, at ¶¶ 4-5; Ans. Am. Cmplt., Doc. 32, at ¶¶ 4-5). In accordance with the Pottstown Ordinance, the Jefferson Avenue property was scheduled for a routine inspection on March 13, 2017 at 11:00 a.m., for which with notice was provided. (Am. Cmplt., Doc. 20, at ¶¶ 18-19; Ans. Am. Cmplt., Doc. 32, at ¶¶ 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. (Am. Cmplt., Doc. 20, at ¶ 20; Ans. Am. Cmplt., Doc. 32, at ¶ 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. (Am. Cmplt., Doc. 20, at ¶ 21; Ans. Am. Cmplt., Doc. 32, at ¶ 21). On the same date, the Magisterial District Court stayed the execution of the administrative warrant upon Plaintiffs' request. (Am. Cmplt., Doc. 20, at ¶ 22; Ans. Am. Cmplt., Doc. 32, at ¶ 22).

C. Plaintiffs O'Connor.

Plaintiff Thomas O'Connor owns the property located at 466 N. Franklin Street, Pottstown, Pennsylvania. (Am. Cmplt., Doc. 20, at ¶ 31; Ans. Am. Cmplt., Doc. 32, at ¶ 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

² Plaintiff Camburn has permitted administrative warrantless searches of other properties owned by him in accordance with the subject Pottstown Ordinance; and has also requested that Pottstown obtain an administrative warrant, after which he complied with searches of his other Pottstown properties. (Ans. Am. Cmplt., Doc. 32, at ¶ 5).

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. (Am. Cmplt., Doc. 20, at ¶¶ 34-38; Ans. Am. Cmplt., Doc. 32, at ¶ 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. (Am. Cmplt., Doc. 20, at ¶ 39; Ans. Am. Cmplt., Doc. 32, at ¶ 39-40).

V. STANDARD OF REVIEW

Pennsylvania Rule of Civil Procedure 1034(a) provides that “[a]fter the relevant pleadings are closed, but within such time as not to unreasonably delay the trial, any party may move for judgment on the pleadings.” Pa.R.Civ.P. 1034(a). In determining if there is a dispute as to facts, the court must confine its consideration to the pleadings and relevant documents. *DiAndrea v. Reliance Savings and Loan Association*, 456 A.2d 1066, 1069 (Pa. Super. 1983); *Pocono Summit Realty, LLC v. Ahmad Amer, LLC*, 52 A.3d 261, 267 (Pa. Super. 2012). The court must accept as true all well pleaded statements of fact, admissions, and any documents properly attached to the pleadings presented by the party against whom the motion is filed. *McAllister v. Millville Mutual Insurance Co.*, 640 A.2d 1283, 1285 (Pa. Super. 1994). The court also may take judicial notice of public documents. *Bykowski v. Chesed, Co.*, 625 A.2d 1256, 1258 (Pa. Super. 1993); *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 as a matter of law that the Borough’s rental inspection Ordinance violates the Pennsylvania Constitution. The Pottstown Defendants are entitled to judgment on the pleadings

as a matter of law.

VI. LEGAL ARGUMENT

For at least half a century, federal constitutional law has been clear: an administrative search warrant need not be supported by individualized suspicion of a code violation to justify an unconsented-to rental housing inspection. *Camara v. Municipal Court of San Francisco*, 387 U.S. 523, 538 (1967). An administrative warrant satisfies the probable cause requirement in the Fourth Amendment to the United States Constitution “if reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling.” *Id.* Pennsylvania courts have relied upon the sound reasoning in *Camara* pertaining the issuance of administrative warrants to conduct rental inspections. *See, e.g., Com. v. Tobin*, 828 A.2d 415 (Pa. Cmwlth. 2003); *Simpson v. City of New Castle*, 740 A.2d 287 (Pa. Cmwlth. 1999); *Green Acres Apts., Inc. v. Bristol Twp.*, 482 A.2d 1356 (Pa. Cmwlth. 1984). On each occasion, the health, welfare and safety of citizens was favored over the landlord’s rights. *Id.*

Plaintiffs ask this Court to depart from decades of established law and hold that Article I, Section 8 of the Pennsylvania Constitution requires more: probable cause of the sort required in a criminal investigation. No jurisdiction has adopted Plaintiffs’ position. Indeed, Pennsylvania courts have issued administrative search warrants supported by *Camara* probable cause to inspect rental units. There is no “compelling reason” to interpret Article I, Section 8 differently than the Fourth Amendment in the context of an administrative search warrant to conduct rental housing inspections. *Com. v. Moore*, 928 A.2d 1092, 1101 (Pa. Super. 2007). Such a warrant, when issued by a magisterial district court and satisfying an ordinance containing reasonable standards, need not be supported by individualized suspicion of a code violation.

QUESTION 1: Pottstown Borough's mandatory inspection requirements of rental properties are constitutional pursuant to Article I, Section 8 of the Pennsylvania Constitution.

A. Pennsylvania Courts have Tacitly Approved and Applied the *Camara* Decision.

In evaluating compliance with the Fourth Amendment's warrant and probable cause requirements, the United States Supreme Court concluded in *Camara* that

[I]t is obvious that 'probable cause' to issue a warrant to inspect must exist if reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling. Such standards, which will vary with the municipal program being enforced, may be based on the passage of time, the nature of the building, (e.g., a multi-family apartment house), or the condition of the entire area, but they will not necessarily depend upon specific knowledge of the condition of the particular dwelling.

Id. at 538.

Through the application of a balancing test focused upon reasonableness, the *Camara* Court also concluded that rental-housing inspections are regulatory, not criminal. *Id.* at 538. Because there was no other effective way to enforce the code, the Supreme Court held that criminal-type probable cause was an ***unreasonable standard*** for administrative warrants. *Id.* (emphasis added). Here, the Pottstown Ordinance supplies the requisite probable cause for an administrative warrant because it requires non-discriminatory, routine, periodic inspections as part of code compliance, which is consistent with both *Camara* and Pennsylvania precedent.

B. The Pottstown Ordinance is Legally Consistent with Article I, Section 8.

Like the Fourth Amendment, Article 1, Section 8 of the Pennsylvania Constitution does not ban all searches and seizures; it bans ***unreasonable*** searches and seizures. *See* U.S. CONST. amend. IV; PA. CONST. art. I § 8; *Com. v. Miller*, 518 A.2d 1187, 1191 (Pa. 1986) (emphasis added). In this case, the pleadings, along with a careful reading of the Ordinance, and

particularly Chapter 11, in conjunction with the general provisions of the Property Maintenance Code, (Ordinance, § 301, *et seq.*), reflect that the Pottstown 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 inspect their private property. (Am. Cmplt, Doc. 20, at ¶ 78). However, there is a clear difference between criminal searches and regulatory rental-housing inspections with advance notice.

First, the objective of a criminal search is inherently different than that of a regulatory rental-housing inspection. While a warrant is required to conduct a *non-consensual* search, the objective of the search determines whether an administrative or a criminal warrant is required. *Mich. v. Clifford*, 464 U.S. 287, 294 (1984) (requiring administrative warrants for inspections by fire officials in absence of exigent circumstances). If the primary objective of a search is to gather evidence of criminal conduct, then a criminal search warrant is required. *Id.* Such a warrant must be supported by criminal-type probable cause, meaning “there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Com. v. Otterson*, 947 A.2d 1239, 1244-45 (Pa. Super. 2008) (*quoting Com. v. Brown*, 924 A.2d 1283, 1286-87 (Pa. Super. 2007)). This high standard is appropriate considering the heightened consequences for a criminal conviction, such as incarceration, disenfranchisement, prohibition on gun ownership, registration as a sex offender, revocation of professional licensure, and other collateral consequences. *See, e.g.*, Sentencing Code, 42 Pa.S.C. §§ 9701, *et seq.*; Sentencing Guidelines, 204 Pa. Code §§ 303.1, *et seq.* In this case, the objective of the rental-housing inspection is regulatory in nature, not criminal. (Ans. Am. Cmplt., Doc. 32, at ¶ 41; Ordinance, Chp. 11 § 201(1)).

Second, 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. *Id.*; see also *Com. v. Tobin*, 828 A.2d 415, 419 (Pa. Cmwlth. 2003). An administrative search warrant is required where the primary objective of the search is to ascertain compliance with the minimum standards set forth in regulatory ordinances. *Id.* (citing *Griffin v. Wisconsin*, 483 U.S. 868, 877 (1987)); see also *Camara*, 387 U.S. at 530. This is reasonable because rental-housing inspections are less intrusive than criminal searches. The inspection is of the rental housing itself, not the tenant's body or possessions, so it is "a relatively limited invasion" of the tenants' privacy. *Camara*, at 537; *Tobin*, *supra* at 422-23.

Finally, rental-housing inspections also are less intrusive because landlords and tenants receive advance notice. (Ans. Am. Cmplt., Doc. 32, at ¶ 45; Ordinance, Chp. 11 § 203.I(3)). The fact that tenants are entitled to advance and reasonable notice before an inspection illustrates that the target of the inspection is the housing's condition, not its occupants or their possessions. Advance notice "mitigates [the inspection's] intrusiveness to some degree." *Camera*, *supra*. 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* 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).

While under certain circumstances, the “[Pennsylvania] constitution provides greater protection than the Fourth Amendment,” *Moore*, 928 A.2d at 1099–1101; *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* at 1101 (emphasis added).

Guided by these standards, Plaintiffs’ allegations that the Pottstown Ordinance does not provide adequate safeguards against unreasonable searches lacks legal basis. First, the Ordinance is presumed constitutional. *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). Second, it is a reasonable legislative or administrative plan derived from neutral sources. *Tobin, supra* 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. (Ans. Am. Cmplt., Doc. 32, at ¶ 41; Ordinance, Chp. 11 § 201(1)). 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. (Ans. Am. Cmplt., Doc. 32, at ¶ 41; Ordinance, Chp. 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. (Ans. Am. Cmplt., Doc. 32, at ¶¶ 4-7). Finally, the need to inspect these properties far outweighs the negligible invasion of Plaintiffs' privacy caused by the inspection. *Tobin, supra*, at 420.

C. The *Edmund* Factors Do Not Require Greater Protection for Landlords and Tenants for Rental-Housing Inspections.

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. (*See* Am. Cmplt.). Rather, Plaintiffs allege that the substance of the Ordinance permitting administrative warrants on less than "traditional" probable cause is violative of the Pennsylvania Constitution. (Am. Cmplt, Doc. 20). That is not this case. Rather, the facts alleged by Plaintiffs and the Ordinance demonstrate that the Ordinance *does not* permit illegal searches of rental properties because a warrant is required for non-consensual searches, (Ans. Am. Cmplt., Doc. 32, at ¶45; Ordinance, Chp. 11 § 203(I)(3)). This is wholly consistent with federal and state precedent.

To determine 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)). Pennsylvania courts may give weight to federal decisions where they "are found to be logically persuasive and well reasoned, paying due regard to precedent and the policies underlying specific constitutional guarantees." *Edmunds*, 586 A.2d at 895 (*citing Commonwealth v. Tarbert*, 535 A.2d 1035, 1038 (Pa. 1987)). An analysis of the *Edmunds*

factors supports the constitutionality of the Ordinance and the lesser probable cause standard to obtain an administrative warrant as provided for in *Camara*.

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 are similar.³ *Edmunds, supra*. Accordingly, this factor does not provide a compelling reason for this Court to declare the Pottstown Ordinance provision unconstitutional based upon the necessity of a stricter criminal-based probable cause.

2. 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. 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, supra* at 394.

³ 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.

The Commonwealth Court has provided several instructive cases that support the constitutionality of the Pottstown's inspection (and warrant) provisions utilizing the *Camara* probable cause for administrative search warrants. On each occasion, the health, welfare and safety of citizens was favored over the landlord's rights. For example, the Commonwealth Court in *Tobin*, citing *Camara* with approval, provided:

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."

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

In *Simpson v. City of New Castle*, the Commonwealth Court similarly 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 determined 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). The history of related Pennsylvania case law provides that administrative warrants may be issued on a lesser basis than traditional criminal-based probable cause for reasonable legislative or administrative standards, derived from neutral sources. Accordingly, this factor does not provide a compelling reason for this Court to declare the Pottstown Ordinance provision unconstitutional based upon the necessity of a stricter criminal-based probable cause.

3. Related Case Law from other States.

The next factor to consider is a review of case law from other jurisdictions. Pottstown Borough is not unique in its use of administrative search warrants for non-consensual rental-housing inspections based upon *Camara's* probable cause standard. *See, e.g.,* City of Lebanon, Residential Rental Licensing and Inspection Ordinance, Art. 1907-06; Borough of Trappe, Residential Rental Licensing and Inspection Ordinance, Ord. No. 408; Township of Hanover, Residential Rental Permitting and Inspection Ordinance, Ord. No. 09-12 Borough of Lititz, Residential Rental Inspection Ordinance, Ord. No. C-523; City of Pottsville, Residential Rental Unit Registration and Inspection Law, Ord. No. 860 § 176-1. The United States Supreme Court found that code-enforcement inspections are reasonable because "such problems have a long history of judicial and public acceptance." *Camara, supra* at 537.

No state has rejected *Camara*'s probable cause standard by finding greater rights under its state constitution. To the contrary, at least fifteen states, including Pennsylvania (*see Tobin, supra*), have applied *Camara* probable cause to administrative warrants for rental housing to enforce municipal codes: California, Connecticut, Kansas, Kentucky, Minnesota, Mississippi, Missouri, Nevada, New York, Virginia, Washington, Iowa, Florida, and Wisconsin. *See, e.g., Griffith v. City of Santa Cruz*, 207 Cal. App. 4th 982, 993 (Cal.App.6th Dist. 2012) (affirming precedent rejecting Fourth Amendment challenge to an ordinance allowing inspection without consent only by way of an administrative warrant); *City and County of San Francisco v. Mun. Court*, 167 Cal. App. 3d 712, 720-21 (Cal.App.1st Dist. 1985) (applying *Camara*'s balancing test to establish probable cause for inspection); *Town of Bozrah v. Chmurynski*, 36 A.3d 210, 215 (Conn. 2012) (requiring criminal-type probable cause to issue the warrant because "the proposed search is not part of a periodic or area inspection program," like in *Camara*); *Board of Cnty. Comm'rs v. Grant*, 954 P.2d 695, 699 (Kan. 1998) ("We are convinced ... based on the analysis found in *Camara* and *See* that the existence of an administrative policy or ordinance which specifies the purpose, frequency, scope, and manner of the inspection provides a constitutional substitute for probable cause that a violation has occurred."); *Louisville Bd. of Realtors v. Louisville*, 634 S.W.2d 163 (Ky. Ct. App. 1982) (applying *Camara* to affirm that requiring inspections of rental housing before tenant moves in does not violate landlord's rights under the Kentucky Constitution or Fourth Amendment); *In re Search Warrant of Columbia Heights v. Rozman*, 586 N.W.2d 273, 275-76 (Mn. Ct. App. 1999) (concluding administrative warrant for rental-housing inspection was properly issued and enforceable by civil contempt); *Crook v. City of Madison*, 168 So. 3d 930, 940 (Miss. 2015) (applying *Camara* probable cause to invalidate ordinance); *Ashworth v. City of Moberly*, 53 S.W.3d 564, 578-80 (W.D. Mo. App. 2001)

(applying *Camara* to affirm that requiring inspections of rental housing does not violate the Missouri Constitution or Fourth Amendment); *Owens v. City of North Las Vegas*, 450 P.2d 784, 787 (1969) (“Where considerations of health and safety are involved, the facts that would justify an inference of ‘probable cause’ to make an inspection are different from those that would justify an inference when a criminal investigation has been undertaken.”); *Sokolov v. Freeport*, 420 N.E.2d 55, 58 (N.Y. 1981) (“In addition, and of compelling significance, the *Camara* opinion expressly provided that the strict standards attending the issuance of a warrant in criminal cases are not applicable to the issuance of a warrant authorizing an administrative inspection.”); *Logie v. Town of Front Royal*, 58 Va. Cir. 527, 533-34 (2002) (applying *Camara* probable cause to a rental inspection ordinance); *City of Seattle v. Leach*, 627 P.2d 159, 161 (Wash. 1981) (“Equally well established is the principle that a lesser degree of probable cause is necessary to satisfy issuing an inspection warrant than is required in a criminal case.”); *City of Seattle v. McCready*, 931 P.2d 156, 159 (Wash. 1997) (upholding the constitutionality of an administrative warrant issued on the basis of *Camara* probable cause); *State v. Carter*, 733 N.W.2d 333, 337 (Iowa 2007) (applying *Camara* to find 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) (applying *Camara* to find “relaxed” probable cause evaluation in administrative search situations); *State v. Jackowski*, 633 N.W.2d 649, 654 (Wis. Ct. App. 2001) (“Thus, Jackowski’s claim that the application for the inspection warrant was deficient because it did not establish probable cause to believe code violations then existed in his building is unavailing.”) (citing *Platteville Area Apartment Assoc. v. City of Platteville*, 179 F.3d 574 (7th Cir. 1999)).

4. Policy Considerations.

Finally, courts are to take into account policy considerations in interpreting Article 1, Section 8. The United States Supreme Court determined that providing for public health and safety in rental housing is so critical that nothing short of “universal compliance” with the property maintenance code is satisfactory. The Court held that “the public interest demands that all dangerous conditions be prevented or abated” *Camara, supra* at 537. These same public health and safety interests identified by the *Camara* Court are embraced in the Pennsylvania Constitution. The Pennsylvania Constitution states that the government is instituted for the “peace, safety and happiness” of its people. PA. CONST. art. I, § 2. As such, the Borough’s police powers permit it to promote the health, morals or safety and the general well-being of the community through its rental-inspection Ordinance. *Adams Sanitation Co., Inc. v. Com. Dept. of Environmental Protection*, 715 A.2d 390 (Pa. 1998). The policy of promoting public health and safety is exemplified by the undisputed purpose of the subject Ordinance which is to “[p]rotect 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 Pottstown and to encourage owners and occupants to maintain and improve the quality of life and quality of rental housing within the community.” (Ans. Am. Cmplt., Doc. 32, at ¶ 41; *see* Ordinance, § 11-201(1)).

Additionally, periodic rental-housing inspections are the only effective way to enforce property maintenance codes. Without *Camara* probable cause for rental housing inspections, the Borough would be hampered in the enforcement of its property maintenance code. “There is unanimous agreement among those most familiar with this field that the only effective way to seek universal compliance with the minimum standards required by municipal codes is through

routine periodic inspections of all structures.” *Camara, supra* at 535-36. The Supreme Court found, “[i]t is doubtful that any other canvassing technique [other than periodic inspections] would achieve acceptable results.” *Id.* at 537.

Many violations of property maintenance codes are internal to the residence, and therefore, are not visible from the public right-of-way outside the property. This echoes the Supreme Court’s determination that “[m]any such [dangerous] conditions - faulty wiring is an obvious example - are not observable from outside the building and indeed may not be apparent to the inexperienced occupant. . . .” *Camara, supra* at 537. It is unreasonable to assume that tenants or landlords have the same technical expertise as the Borough’s inspectors. Therefore, they are not well-situated to self-inspect rental properties. If no administrative search warrant is issued, then no inspection occurs, and the code violation continues unabated, putting the tenant’s and the public’s health and safety at risk. *Camara* probable cause is critical to the enforcement of the subject Ordinance.

Finally, as detailed above, a routine inspection of the physical condition of private rental properties is minimal intrusion compared to the typical police officer’s search for the fruits and instrumentalities of crime. *Tobin, supra*. When a tenant/landlord does not consent to the periodic inspection, the subject Ordinance requires the application of an administrative warrant and approval by a neutral magistrate before inspecting the property. (Ans. Am. Cmplt., Doc. 32, at ¶45; Ordinance, Chp. 11 § 203(I)(3)). Since reasonableness is the ultimate standard, the Pottstown Ordinance adequately protects a tenant’s or landlord’s constitutional rights by providing notice of an inspection, and where objection, to require an authorized administrative search warrant where there is no consent to inspect before conducting a rental inspection. *Tobin, supra; Camara, supra*. It is sound public policy to allow routine rental inspections subject to the

Camara probable cause where a valid public interest, such as the health and safety of the community, justifies the intrusion contemplated. *Tobin, supra*.

5. Conclusion.

Based upon the analysis of the *Edmunds* factors, there is no compelling reason for this Court to declare the Pottstown Ordinance provision unconstitutional based upon the necessity of a stricter criminal-based probable cause.

QUESTION 2: Defendant Keith A. Place is entitled to Official Immunity.

D. Plaintiffs' Claims Against Keith Place Are Barred By Official Immunity.

Mr. Place's involvement in this matter solely arises out of his status as Director of the Licensing and Inspections Department. (Am. Cmplt., Doc. 20 at ¶ 9). It is undisputed that Plaintiffs name Mr. Place *only* in his official capacity; that Plaintiffs make no factual allegations against Mr. Place regarding his role in the Ordinance process, implementation or enforcement of the rental inspection elements of the Ordinance. *Id.* The Declaratory Judgment claim asserted in Count I, is asserted *only* against the Borough, not Mr. Place. (Am. Cmplt., Doc. 20 at Count I).

The Tort Claims Act generally provides immunity for local agencies and political subdivisions for "any injury to a person or property caused by any act of the local agency or an employee thereof or any other person." 42 Pa.C.S. § 8541. Official immunity from civil suits applies to government officials when said official acts within the course and scope of their duties. *See Hecklen v. Hoffman*, 761 A.2d 207, 209 (Pa. Cmwlth. 2000). Section 8546 is the legislative embodiment of official immunity for local agency employees. 42 Pa.C.S.A. § 8546(2). Specifically, this section grants official immunity for such employees when, *inter alia*, "the conduct of the employee which gave rise to the claim was authorized or required by law, or that he in good faith reasonably believed the conduct was authorized or required by law." *Id.*

In this case, Mr. Place is entitled to official immunity from Plaintiffs' claims. *See* 42 Pa.C.S. § 8545, 8546. As the Borough's Director of the Licensing and Inspections Department, conduct taken in his official capacity is deemed to be within the scope of his official duties. Moreover, there are no allegations in the pleadings to establish that his acts amounted to willful misconduct to make the defense of official immunity unavailable to him.⁴ Accordingly, Plaintiffs' action against Mr. Place is barred pursuant to official immunity, and he must be dismissed, with prejudice.

V. CONCLUSION

For the reasons set forth herein, the Pottstown Defendants respectfully request this Honorable Court enter an Order granting their Motion for Judgment on the Pleadings, and dismiss Plaintiffs' Amended Complaint, with prejudice.

Alternatively, Defendant Place is entitled to immunity, and must be dismissed.

Respectfully Submitted,

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Date: June 21, 2018

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⁴ *See* 42 Pa.C.S.A. § 8550 (official immunity not applicable when there has been a judicial determination of, *inter alia*, actual malice or willful misconduct).