

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**JOSEFINA LOZANO,
ROBERT PIERCE, DORICE PIERCE,
and DELLA SIMS**

Plaintiffs,

v.

**CITY OF ZION, a municipal corporation,
Mayor BILLY MCKINNEY,
Commissioner of Building and Public
Property JACQUELINE HOLMES,
Director of the Zion Building
Department RICHARD IANSON, and
Inspector WARREN FERRY,
in their official capacities,**

Defendants.

Case No. 1:19-cv-06411

VERIFIED COMPLAINT

INTRODUCTION

1. This is a civil rights lawsuit challenging the City of Zion's unconstitutional rental inspection program, which punishes individuals for exercising their clearly established Fourth Amendment rights.

2. The Fourth Amendment requires that a government official obtain consent or an "administrative warrant" before conducting a rental inspection of a tenant's home. *See Camara v. Municipal Court*, 387 U.S. 523, 538–39 (1967). The City of Zion and its officials find this requirement inconvenient, so when tenants in Zion do not consent to allow city inspectors into their homes, the inspectors do not seek a warrant. Rather, the City threatens the landlord with

draconian punishments—fines of \$750 per day and a revocation of the right to rent the property—unless the landlord coerces the tenants into “consenting” to a search.

3. Plaintiffs are landlord, Josefina Lozano, and her tenants, Robert Pierce, Dorice Pierce, and Della Sims. The City of Zion wishes to inspect Plaintiffs’ homes, but Plaintiffs do not consent to a search. The City is now threatening Josefina with punitive fines unless she coerces her tenants into “consenting” to searches of their homes.

4. Plaintiffs filed this action to vindicate their Fourth Amendment rights and to prevent the City from entering their homes without a warrant.

THE PARTIES

5. Plaintiff Josefina Lozano is a landlord who owns two multi-family buildings at 1503 and 1509 27th St. in Zion, Illinois. She immigrated to the United States from Mexico as a child, became a U.S. Citizen, has operated her own residential rental properties since 1984, and obtained her law degree as a second career in 2004. She respects her tenants and their constitutional rights. Josefina is unwilling to allow Zion to intrude into her tenants’ homes without their consent or a warrant. She is committed to standing with her tenants in protecting their constitutional rights.

6. Plaintiffs Robert and Dorice Pierce rent from Josefina. They live in Unit #7 at 1503 27th St. in Zion, Illinois. They are each 61 years old. Robert is a counselor for a family services agency, and Dorice is retired. The Pierces have

rented from Josefina since 2000. They value their personal privacy and do not consent to the City entering their most private spaces.

7. Plaintiff Della Sims is one of Josefina's tenants. She rents Unit #1 at 1509 27th St. in Zion, Illinois. She is a retired postal worker who began renting from Josefina in 1998. She values her personal privacy, and does not consent to the City entering her most private spaces.

8. Defendant City of Zion ("Zion" or the "City") is a township duly organized and existing under the laws of the State of Illinois, with offices located at 2828 Sheridan Rd., Zion, Illinois, 60099.

9. Defendant Billy McKinney is and was, at all relevant times, either the Mayor and Commissioner of Public Affairs for the City of Zion or the Commissioner of Building, Property & Zoning for the City of Zion charged with implementing the rental inspection program, with an office located at 2828 Sheridan Rd., Zion, Illinois, 60099. Mr. McKinney is sued in his official capacity.

10. Defendant Jacqueline Holmes is the Commissioner of Building and Public Property, with an office located at 2828 Sheridan Rd., Zion, Illinois, 60099. Ms. Holmes is sued in her official capacity.

11. Defendant Richard Ianson is and was, at all relevant times, the Director of the Zion Building Department, with offices located at 2828 Sheridan Rd., Zion, Illinois, 60099. Mr. Ianson is sued in his official capacity.

12. Defendant Warren Ferry is and was, at all relevant times, an Inspector for the Zion Building Department, with offices located at 2828 Sheridan Rd., Zion, Illinois, 60099. Mr. Ferry is sued in his official capacity.

13. All actions by the Defendants described herein were undertaken under color of state law which caused the deprivation of Plaintiffs' rights protected by the United States Constitution.

14. All acts herein of the Defendant City of Zion, its officers, agents, servants, employees or persons acting at their behest or direction, were done and are continuing to be done under the color or pretense of state law.

JURISDICTION AND VENUE

15. This civil-rights lawsuit arises under the Fourth and Fourteenth Amendments to the United States Constitution; the Civil Rights Act of 1871, 42 U.S.C. § 1983; and the Declaratory Judgment Act, 28 U.S.C. § 2201.

16. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331; 28 U.S.C. § 1343(a)(3), 28 U.S.C. § 1343(a)(4), 42 U.S.C. § 1983; 28 U.S.C. § 2201(a); under 28 U.S.C. § 2202, to secure preliminary and injunctive relief and damages; and under 42 U.S.C. § 1988 to grant Plaintiffs' prayer for relief on recovery of costs, including damages, nominal damages, restitution, and reasonable attorney fees.

17. Venue lies in this Court under 28 U.S.C. § 1391.

OVERVIEW OF THE ZION RENTAL INSPECTION CODE

18. In 2015, the City of Zion, Illinois, enacted its rental inspection ordinance.

19. 19. The City held a filmed open forum for landlords regarding the newly-passed ordinance. Explaining the purpose of the new program, the mayor stated that an “overabundance of non-owner-occupied rental property” was a driving force behind Zion’s severe financial distress. *See* CITY OF ZION, DEPARTMENT OF BUILDING, Rental Property Information, <http://www.cityofzion.com/building-department/rental-property-information/> (last visited Sept. 25, 2019).

20. The mayor found it disquieting that “60% of the residential living spaces in Zion are rental” when a healthy city should, in his view, have “23–30% rental property.”

21. Citing studies indicating that communities were better with fewer rentals, that high taxes are driven by low-quality, low-income rental housing, and that renters do not care for their properties like homeowners, the mayor stated that he was elected “to change what this town looks like.”

22. The provisions of the ordinance are codified in the Municipal Code of the City of Zion, Illinois (“Zion Code” or the “Code”) §10-180. Exhibit A.

23. The provisions require landlords to obtain “certificates of compliance” in order to lawfully rent properties. *Id.* § 10-180(2). One of the requirements for obtaining a certificate is that the property must be inspected every year,

unless all units at the property are found to have no code violations, in which case a two-year certificate is issued. *Id.* § 10-180(3)(a)(ii).

24. In the event a tenant or landlord fails to consent to an inspection, the code reserves to the City “all remedies to secure compliance with this section, including, without limitation, seeking an administrative search warrant **or** suspending or revoking an owner’s certificate of compliance.” *Id.* §10-180(5)(g) (emphasis added).

25. The Code does not “restrict, limit, or alter the city’s authority to inspect any property nor impose penalties for violations of the code.” *Id.* §10-180(8).

26. The Code empowers the City to punish noncompliance by a fine ranging from \$100 per day up to \$750 per day and “[e]ach day a violation continues shall be a separate offense.” *Id.* §10-180(9)(a).

27. In other words, Zion’s code empowers but does not require the City to seek an administrative warrant to inspect a rental property whose occupant does not consent to a search. Worse, it authorizes draconian penalties against the *landlords* for the *tenants’* lawful exercise of their Fourth Amendment rights. This not only punishes an innocent party, but also is a means by which Zion seeks to coerce the landlord into forcing tenants to “consent” to unlawful searches.

28. It was not an accident that the code provides for punishments for people who exercise their constitutional rights. Zion has made full use of these provisions.

29. Zion began implementing the rental inspection program in 2016.

30. When an application to obtain a certificate of compliance is due, the landlord receives a letter requesting an application and notifying the landlord that an inspection must be scheduled.

31. When the landlord submits the application and the City approves it, an inspector from the Building Department contacts the landlord to schedule an inspection of the rental property.

32. The tenant is never contacted by the City or the inspector prior to the date of the inspection.

33. The landlord is expected to inform the tenants when the inspection has been scheduled.

34. On May 25th, 2016, Defendant Richard Ianson, Director of Building and Zoning, sent Josefina a letter demanding that she submit an application for a certificate of compliance and notifying her that she would need to schedule inspections of her rental properties once the application was approved.

35. On June 23, 2016, Josefina submitted her application.

36. On June 29, 2016, the City informed Josefina that her application was incomplete because she had substituted the provided affidavit with her own and instead must sign the affidavit provided by the City.

37. After receiving a final notice of her incomplete application on July 5, 2016, Josefina reapplied and was approved.

38. Josefina then scheduled inspections for September 8, 2016, and sent a memorandum informing her tenants of the scheduled inspections and inviting them to let her know if they did not consent to a search of their homes. Exhibit B.

39. Robert, Dorice, and Della refused to consent to an inspection.

40. Each sent a letter to the City of Zion explaining their non-consent to an inspection under the Fourth Amendment and that any punitive action for this refusal to consent would be unconstitutional. Exhibit C.

41. For three years, the City did not pursue inspections of these three homes. Josefina never received a certificate of compliance for these homes, but the City took no action to prevent her from continuing to rent them

42. From 2016 through 2019, Josefina had having inspections performed for consenting rental properties each year. Josefina also complied with a number of building inspector maintenance requests to bring her properties into code compliance, and she obtained full two-year certificates of compliance for the rental homes that consented to inspections.

43. Each year from 2016 through 2019, Robert, Dorice, and Della refused to consent to an inspection and sent the same letter to that effect. During that time, the City did not conduct an inspection or obtain an administrative warrant.

44. The City's approach changed on August 30, 2019. Defendant Inspector Warren Ferry sent threatening letters to Josefina pertaining to her uninspected rentals. She was informed that she had 30 days, no later than 09/29/2019, to comply with the Code by obtaining a rental inspection of Robert, Dorice, and Della's properties. Failure to comply would result in her application being "referred to the City Attorney for review and possible initiation of legal proceedings." Exhibit D.

45. With burdensome fines for noncompliance or coerced sacrifice of their Fourth Amendment rights imminent, Plaintiffs filed the present complaint and are moving for a temporary restraining order to prevent the City of Zion from punishing the exercise of their Fourth Amendment rights.

46. Zion's threats are not hollow. A landlord in a similar situation to Josefina's, Terry Boone, is an example of how Zion punishes landlords when tenants refuse to consent.

47. Eight of Terry's tenants refused an inspection. Instead of seeking a warrant, Zion initiated an Administrative Adjudication against Terry that resulted in a fine approaching six figures (the total is not final yet)—\$750 per property per day since he was noticed for lack of compliance. The fines continue to accrue. Exhibit E.

48. In the findings of fact for Zion's Administrative Adjudication, the Hearing Officer did not address the Fourth Amendment concerns of Terry and his tenants, nor address the case law cited in tenants' letters to the City.

Instead, the officer focused on the power given the City by its own ordinance and belittled Terry's advising "the tenants of their 'rights.'" Exhibit E at 3 (use of quotation marks in original).

49. The Administrative Adjudication confirmed in writing Zion's position that it has no obligation to comply with the Fourth Amendment: "While the code contemplates that the City *may wish* to seek an administrative warrant, it reserves to seek out whatever remedy is deemed appropriate under the law." *Id.* at 8 (emphasis added).

50. Terry pointed out that these fines were blatantly unconstitutional, but the City imposed them anyway.

51. On information and belief, because of the ruinous liability that the City had imposed on Terry, his wife called the police and asked them to force the non-consenting tenants to open their homes to Zion's inspectors. Exemplifying the coercive pressures exerted by the City's punitive measures, the police complied, assisting the City in a blatant Fourth Amendment violation.

INJURY TO PLAINTIFFS

52. Plaintiffs value their privacy, and they do not want to allow strangers into their homes under any circumstances, but especially if the City does not first obtain a warrant as required by the Fourth Amendment.

53. Plaintiffs are aware of the steps that Zion has taken to enforce its rental inspection program. They fear that government officials will force their

way into their homes, as they have already done to other tenants with the aid of law enforcement.

54. Plaintiffs fear that they will be subjected to ruinous liability for merely asserting their rights. They are aware that Zion has already imposed a fine approaching six figures on another individual who asserted his clearly established constitutional rights.

55. Plaintiffs fear that they will have no choice but to allow Zion's inspectors into their homes because they cannot risk the imposition of ruinous liability.

56. Plaintiffs have had to retain counsel to protect their property and privacy from Defendants' illegal attempts to search their homes.

57. Plaintiffs have suffered and continue to suffer mental and emotional distress from fear of bankrupting fines or invasion of their property and privacy without their consent or a warrant.

58. Plaintiffs endure mental and emotional suffering and distress from coercive pressures applied by the City. The City is pressuring Josefina to strong-arm her tenants into surrendering their Fourth Amendment rights so that she can avoid ruinous fines. Her tenants live under the pressure to succumb to warrantless government searches against their will.

59. Plaintiffs have suffered an injury to their time including spending many hours compiling documents, conducting interviews with lawyers, which take time from work and family to defend against Defendants' threats.

DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF
(28 U.S.C. § 2201, *et seq.*)

60. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in paragraphs 1 through 59 above.

61. An actual controversy has arisen and now exists between Plaintiffs and Defendants concerning Plaintiffs' rights under the United States Constitution. A judicial declaration is necessary and appropriate at this time.

62. An official acting under color of state law is liable under 42 U.S.C. § 1983 if it took action pursuant to official policy of some nature that caused a constitutional tort.

63. Governmental liability may be imposed for a single decision by government policy makers under appropriate circumstances.

64. Plaintiffs desire a judicial determination of their rights against Defendants as they pertain to Plaintiffs' right to be free from warrantless rental inspections and coerced surrender of their property and privacy rights.

65. It is appropriate and proper that a declaratory judgment be issued, pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 57, declaring unconstitutional all relevant portions of the City of Zion, Illinois rental inspection program empowering Defendants to enforce inspections by means other than consent or administrative warrant.

66. Furthermore, pursuant to 28 U.S.C. § 2202 and Fed. R. Civ. P. 65, it is appropriate and requested that this Court issue preliminary and permanent

injunctions prohibiting Defendants from punishing Plaintiffs for exercising their clearly established constitutional rights.

Count I
(Violation of U.S. Const., Am. IV)

67. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in 1 through 66 above.

68. The Fourth Amendment prohibits “unreasonable searches and seizures” of people’s “persons, houses, papers, and effects” unless consent is given or a proper warrant is issued.

69. Government intrusion into a home is per se an unreasonable search requiring consent or a warrant.

70. A rental inspection is a search of a home.

71. A rental inspection requires consent or a warrant consistent with *Camara v. Municipal Court*, and punitive enforcement measures are forbidden.

72. The Zion Code does not require the City to obtain an administrative warrant to conduct a rental inspection.

73. The Zion Code allows the City to seek punitive fines and suspend or revoke rental rights when a tenant does not consent to a rental inspection. This violates the Fourth Amendment.

74. The Zion Code as applied by Defendants against Plaintiffs has violated and imminently threatens to continue violating the Fourth Amendment.

75. Unless the rental inspection program and punitive retaliatory measures of the Zion Code are declared unconstitutional and Defendants, their

agents, employees, servants, and representatives are enjoined from applying such measures, Plaintiffs will suffer, or imminently be threatened by, great and irreparable harm.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Declare unconstitutional the rental inspection program of Section 10-180 of the Municipal Code of the City of Zion, authorizing the City to punish a landlord or tenant for not consenting to a rental inspection;
- B. Declare unconstitutional the rental inspection program of Section 10-180 of the Municipal Code of the City of Zion, as applied by Defendants against Plaintiffs, authorizing the City to punish a landlord or tenant for not consenting to a rental inspection;
- C. Enjoin Defendants from enforcing the rental inspection program through punishing fines and by other punitive means;
- D. Award Plaintiffs damages of \$5,000.00 for, among other things, fees paid to the City as required by its unconstitutional rental-inspection program, the burden of defending themselves against an unconstitutional rental inspection program—including time away from work, for enduring the fear and coercive pressures of the City’s punitive rental inspection program, and for defending themselves against the City’s repeated attempts to search their home;

E. Award Plaintiffs nominal damages of \$1 for the violation of their
constitutional rights;

F. Award such other relief as the Court deems just, equitable, and proper.

Dated: September 26, 2019

Respectfully submitted,

JOSEFINA LOZANO,
ROBERT PIERCE, DORICE PIERCE,
AND DELLA SIMS, Plaintiffs

By: /s/ James W. Joseph
One of Their Attorneys

Rob Peccola
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VERIFICATION

STATE OF ILLINOIS)
) SS:
CITY OF ZION)

Josefina R. Lozano, being first sworn, deposes and states as follows:

1. My name is Josefina R. Lozano. I am making this Verification on personal knowledge.
2. I am familiar with the facts referred to in my complaint, I have read the allegations and facts contained in my Complaint and the facts contained in my Complaint and the facts and allegations are true to the best of my knowledge.
3. If the requested injunction is not entered immediately, I will suffer irreparable injury, loss and damage.

THE DEPONENT SAYS NOTHING FURTHER.


Josefina R. Lozano

SWORN BEFORE ME this 26th day of September, 2019.



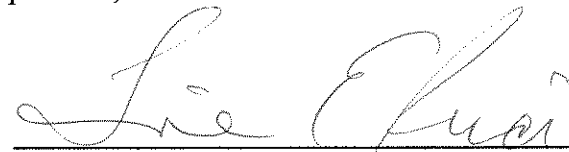

Notary Public

EXHIBIT A

Sec. 10-180. - Rental housing inspection and certification.

- (1) *Definitions:* Unless otherwise expressly stated or clearly indicated by context, the following terms as used in this section shall have the meanings indicated in this section:

Code means the Municipal Code of the City of Zion, as amended, all city rules, regulations, and policies, and all state laws, rules, regulations, and policies.

Code official means the director of building and zoning or the director's designee.

Dwelling unit means a building or portion thereof designed to be used as a residence; a single unit providing complete independent facilities for the exclusive use of a person or persons, including, but not limited to, provisions for living, sleeping, eating, cooking, and sanitation. A dwelling unit shall not include motels, hotels, nursing homes, boardinghouses, hospital patient housing, or rooming houses, as those terms are defined in section 102-281.

Initial inspection means the first inspection of a dwelling unit for the purpose of determining compliance with the code.

Let for occupancy or let means to permit, provide or offer possession or occupancy of a dwelling unit to a person who is or who is not the legal owner of record thereof, pursuant to a written or unwritten lease, agreement, license, or similar instrument, or pursuant to a recorded or unrecorded agreement or contract of sale for the premises.

Occupant means a person occupying a dwelling unit or using the property as a legal address for any purpose.

Owner means any person, agent, operator, firm, or corporation having a legal or equitable ownership interest in a property.

Person means a corporation, firm, partnership, association, organization, or any group acting as a unit or legal entity, as well as a natural person.

Property agent means a person, operator, firm, partnership, corporation, or other legal entity designated in writing by the property owner on the owner's certificate of compliance application.

Re-inspection means any inspection of a residential rental property that occurs after the initial inspection.

Residential rental property means any dwelling unit let for occupancy to a person or persons for any amount of rent or compensation and for use as a dwelling unit.

- (2) *Prohibited conduct*

- (a) It shall be unlawful for any person to let to another for use or occupancy any residential rental property without a current and valid city-issued certificate of compliance.

- (b) Reserved.
- (c) It is unlawful for any person to occupy a residential rental property that does not have a valid city-issued certificate of compliance.
- (d) It is unlawful to allow any person to occupy a residential rental property that does not have a valid city-issued certificate of compliance.
- (e) It is unlawful for any person to violate any provision of this section.

(3) *Certificate of compliance—conditions and term*

- (a) A certificate of compliance will remain valid until the sooner of any of the following occurs:
 - (i) The city revokes or suspends the certificate of compliance in accordance with this section;
 - (ii) For properties having to correct violations, 12 months after the date of the certificate of compliance's issuance; For properties having received a certificate of compliance from the city without having to correct any violations, 24 months after the date of certificate of compliance's issuance;
 - (iii) The residential rental property is damaged or destroyed to the extent that it is no longer habitable.
- (b) A certificate of compliance may not be transferred between owners.
- (c) A certificate of compliance may not be transferred from one residential rental property to another.
- (d) Reserved.

(4) *Certificate of compliance—application*

- (a) Owners shall complete a certificate of compliance application on a form provided by the city and provide all other information reasonably requested by the city. At a minimum, owners shall provide the following information for each residential rental property:
 - (i) Owner's legal name, home and business address, home, business, and mobile telephone numbers, and e-mail address;
 - (ii) Property agent's legal name, business address, business and mobile telephone numbers, and e-mail address;
 - (iii) The address of the residential rental property;
 - (iv) The residential rental property's square footage;
 - (v) Reserved.
 - (vi) The application and inspection fee listed in the city's fee schedule.
- (b) An owner shall submit a revised application to the city within 30 days of any modifications to the information the owner previously provided on a certificate of

compliance application.

- (c) Applications for certificates of compliance shall be filed within 120 days of the effective date of this section. Thereafter, applications for certificates of compliance shall be filed at least 30 days before the certificate of compliance's expiration.
 - (d) Each certificate of compliance shall contain the certificate's date of issuance, the owner's name, and the address of the residential rental property that the certificate of compliance covers.
 - (e) Owners that fail to submit a certificate of compliance application in accordance with the timeframes set forth in subsection 10-180(4) shall be required to pay an application and inspection fee equaling 200 percent of the application and inspection fee listed in the city's fee schedule.
 - (f) The city may issue a temporary certificate of compliance when, in the opinion of the code official, none of the violations observed threaten life-safety or health. Temporary certificates of compliance shall expire no later than 60 days after issuance.
- (5) *Inspections*
- (a) Upon submitting a certificate of compliance application, the owner shall schedule with the city an inspection of the residential rental property.
 - (b) Each inspection made by the code official shall be for the purpose of determining compliance with the code.
 - (c) The code official shall issue a certificate of compliance only upon finding that there is no condition that would constitute a hazard to the health and safety of the occupants and the residential rental property is otherwise fit for occupancy. If such findings are not made, the code official shall issue a notice to comply to the owner or property agent. Upon re-inspection and evidence of compliance, the code official shall issue a certificate of compliance.
 - (d) The code official shall issue certificates of compliance on the condition that the residential rental property remains in a safe, habitable, and code-compliant condition. If upon re-inspection the city determines that conditions exist which constitute a hazard to the occupants' health or safety, the city may immediately suspend or revoke the certificate of compliance by mailing notice to the owner or property agent.
 - (e) The code official shall maintain a city-wide plan of all residential rental properties occupied or held or offered for occupancy based on certificate of compliance applications and other reasonably available information.
 - (f) The code official shall establish and maintain a schedule of inspections necessary to carry out the intent and purpose of this section.
 - (g) In the event an owner, property agent, or occupant of a residential rental property refuses to allow the code official to inspect a residential rental property, schedule a time

to inspect the residential rental property, or otherwise fails to comply with the code, the city reserves all remedies to secure compliance with this section, including, without limitation, seeking an administrative search warrant or suspending or revoking an owner's certificate of compliance.

- (h) Violations discovered during inspection shall be identified in a written notice to the owner or the property agent. If the identity of the owner cannot be readily ascertained, the notice shall be mailed to the last taxpayer of record shown on the records of the Lake County Treasurer. Violation notices shall be mailed to the owner or property agent within 30 days of their discovery by the code official.
- (i) The code official shall complete as many re-inspections as are reasonably necessary to ensure that appropriate corrective action has been taken to bring the residential rental property into compliance with the code.

(6) *Appeals*

- (a) Any person receiving a violation notice pursuant to this section, any person denied a certificate of compliance, or any person whose certificate of compliance has been suspended or revoked shall have the right to appeal to the planning and zoning commission. Such an appeal shall be in writing and filed with the code official within 14 days of the date of the code official's action. The appeal shall contain a complete statement of the reasons for the appeal, the specific facts supporting the appeal, and all evidence the appellant intends to rely on to support the appeal.
 - (b) The planning and zoning commission shall schedule a meeting to consider the appeal within 30 days of receiving the appeal. The planning and zoning commission may consider all facts, evidence, and testimony presented by the appellant and the code official, and all other information the planning and zoning commission determines to be relevant to the appeal.
 - (c) The planning and zoning commission shall send written notice of its decision to the owner within 30 days of hearing the appeal.
- (8) *Other inspections:* Nothing in this section shall restrict, limit, or alter the city's authority to inspect any property nor impose penalties for violations of the code.

(9) *Penalty*

- (a) In addition to any other remedy, including, without limitation, remedies at law and in equity, any person violating the terms of this section shall be fined not more than \$750.00 for each day the violation continues nor less than \$100.00 for each day the violation continues. Each day a violation continues shall be a separate offense.
- (b) Every act or omission by any person that constitutes a violation of this section shall be deemed to be an act or omission of the owner and punishable in accordance with the terms of this section.

(Ord. No. 15-O-33, § 2, 7-7-15; Ord. No. 15-O-54, § 2, 11-17-15)

EXHIBIT B

MEMORANDUM

TO: ALL TENANTS

FROM: AL & JOSEFINA LOZANO

RE: CITY OF ZION RENTAL INSPECTION ORDINANCE

Please be advised that pursuant to the City of Zion's Rental Inspection Ordinance, the City has scheduled an inspection of your unit on **January 15, 2019 at 9:00 a.m.**

Please make sure that the basement area is clear of items around the furnace, hot water heater and electrical boxes.

If you do not wish to allow the City inspector inside your unit please give me a call to discuss the matter.

If you have any concerns about this upcoming inspection please feel free to call us at 847-746-6647.

Thank you

Al & Josefina Lozano

MEMORANDUM

TO: ALL TENANTS

FROM: AL & JOSEFINA LOZANO

RE: CITY OF ZION RENTAL INSPECTION ORDINANCE

Please be advised that pursuant to the City of Zion's Rental Inspection Ordinance, the City has scheduled an inspection of your unit on **January 9, 2019** at **9:00 a.m.**

Please make sure that the basement area is clear of items around the furnace, hot water heater and electrical boxes.

If you do not wish to allow the City inspector inside your unit please give me a call to discuss the matter.

If you have any concerns about this upcoming inspection please feel free to call us at 847-746-6647.

Thank you

Al & Josefina Lozano

MEMORANDUM

TO: ALL TENANTS

FROM: AL & JOSEFINA LOZANO

RE: CITY OF ZION RENTAL INSPECTION ORDINANCE

Please be advised that pursuant to the City of Zion's Rental Inspection Ordinance, the City has schedule an inspection of your unit on **September 14, 2016 at 1:30 p.m.**

Please make sure that the basement area is clear of items around the furnace, hot water heater and electrical boxes.

If you do not wish to allow the City inspector inside your unit please give me a call to discuss the matter.

If you have any concerns about this upcoming inspection please feel free to call us at 847-746-6647.

Thank you

Al & Josefina Lozano

MEMORANDUM

TO: ALL TENANTS

FROM: AL & JOSEFINA LOZANO

RE: CITY OF ZION RENTAL INSPECTION ORDINANCE

Please be advised that pursuant to the City of Zion's Rental Inspection Ordinance, the City has schedule an inspection of your unit on **September 8, 2016 at 1:30 p.m.**

Please make sure that the basement area is clear of items around the furnace, hot water heater and electrical boxes.

If you do not wish to allow the City inspector inside your unit please give me a call to discuss the matter.

If you have any concerns about this upcoming inspection please feel free to call us at 847-746-6647.

Thank you

Al & Josefina Lozano

EXHIBIT C

Della Simon
1509 27th #1
Zion, IL 60099

January 22, 2018

Richard Ianson
Director of Building
City of Zion
2828 Sheridan Road
Zion, IL 60099

We are the tenants, i.e., residents at property commonly known as:

1509 27th #1 Zion IL 60099

Be advised that we will not voluntarily allow the City of Zion to inspect the residence referenced above. We therefore hereby invoke our rights under the Fourth Amendment to the U.S. Constitution and Article I, Section 6 of the Illinois Constitution, which require the government to obtain a warrant based upon probable cause before it can conduct a rental inspection without consent. This includes, but is not limited to, the right under the Fourth Amendment announced in *Camara v. Municipal Court*, 387 U.S. 523 (1967).

Further, please be advised that fining any of the undersigned for refusing a warrantless inspection, or failing to issue or renew a license for refusing a warrantless inspection, or in any way punishing the undersigned for refusing a warrantless inspection, would be an unconstitutional burden on simply exercising constitutional rights, which itself is unconstitutional. *Camara*, 387 U.S. at 540 (ruling unconstitutional government's attempt to punish for demanding a warrant to inspect a rental property) *Black v. Village of Park Forest*, 20 F. Supp. 2d 1218, 1230 (N.D. Ill. 1998) (fee of \$60 charged when Village forced to obtain an administrative warrant for a rental inspection is unconstitutional). Therefore, in any action that the City takes to obtain a warrant, we expect it will not request any of us, or our property, to pay for the costs of doing so, or any associated fees. Furthermore, for identical reasons, we expect that we will not be fined or threatened with prosecution, or that any rental licenses will be placed in any jeopardy for demanding a warrant and/or not allowing a warrantless inspection. Any of these actions—charging of costs, revocation of the license, or fines for not scheduling an inspection or not allowing a warrantless inspection—would violate a clearly established constitutional right guaranteed by the Fourth Amendment and Article I, Section 6 of the Illinois Constitution.

Sincerely,

Della Simon

DELLA SIMS
1509 27th #1
ZION, IL 60099

December 27, 2018

Richard Ianson
Director of Building
City of Zion
2828 Sheridan Road
Zion, IL 60099

We are the tenants, i.e., residents at property commonly known as:

1509 27th #1 Zion, IL 60099

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Sincerely,

Della Sims

Robert Pierce
1503 27th St #7
Zion IL 60099

December 27, 2018

Richard Ianson
Director of Building
City of Zion
2828 Sheridan Road
Zion, IL 60099

We are the tenants, i.e., residents at property commonly known as:

2503 27th St #7 Zion IL 60099

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Sincerely,

Robert Pierce

DELLA SIMS
1509 27th #1
ZION, IL 60099

December 27, 2018

Richard Ianson
Director of Building
City of Zion
2828 Sheridan Road
Zion, IL 60099

We are the tenants, i.e., residents at property commonly known as:

1509 27th #1 Zion, IL 60099

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Sincerely,

Della Sims

Della Sims
1509 27th #1
Zion, IL 60099

September 1, 2016

Richard Ianson
Director of Building
City of Zion
2828 Sheridan Road
Zion, IL 60099

We are the tenants, i.e., residents at property commonly known as:

Della Sims/

Be advised that we will not voluntarily allow the City of Zion to inspect the residence referenced above. We therefore hereby invoke our rights under the Fourth Amendment to the U.S. Constitution and Article I, Section 6 of the Illinois Constitution, which require the government to obtain a warrant based upon probable cause before it can conduct a rental inspection without consent. This includes, but is not limited to, the right under the Fourth Amendment announced in *Camara v. Municipal Court*, 387 U.S. 523 (1967).

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Sincerely,

Della Sims

Robert C. and Dorice A. Pierce

1503 27th Street Unit 7

Zion, IL 60099

September 01, 2016

Richard Ianson
Director of Building
City of Zion
2828 Sheridan Road
Zion, IL 60099

We are the tenants, i.e., residents at property commonly known as:

Robert C, and Dorice A, Pierce 1503 27th Street Unit 7, Zion, IL 60099

Be advised that we will not voluntarily allow the City of Zion to inspect the residence referenced above. We therefore hereby invoke our rights under the Fourth Amendment to the U.S. Constitution and Article I, Section 6 of the Illinois Constitution, which require the government to obtain a warrant based upon probable cause before it can conduct a rental inspection without consent. This includes, but is not limited to, the right under the Fourth Amendment announced in *Camara v. Municipal Court*, 387 U.S. 523 (1967).

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Sincerely,

Robert C. and Dorice A. Pierce

Robert C. Pierce
Dorice A. Pierce

EXHIBIT D

Director of Building and Zoning
Richard Ianson (847) 746-4097
richardi@zion.il.us



Inspectors
Barron Peterson (847) 746- 4020
barronp@zion.il.us

Lead Inspector
Robert Surano (847) 746-4026
bobs@zion.il.us

City of Zion
Building Department
2828 Sheridan Road
Zion, IL 60099

Warren Ferry (847) 746-4025
warrenf@zion.il.us

Juan Jaquez (847) 746-4096
juanj@zion.il.us

Josefina Lozano
P.O. Box 298
Zion IL 60099

08/30/2019

Re: 1509 27TH ST Units: 1, 2

Dear CHICAGO LAND TRUST CO. AS TRUSTEE JOSEFINA R LOZANO:

The Residential Rental Housing Inspection and Certification Application for the above referenced property was received on 12/28/2018. According to our records an inspection has not been scheduled with the City. This violates Code section 10-180(5)(a).

Please accept this letter as an official notice that an inspection must be scheduled within **30 Days** of this notice but no later than **09/29/2019**. If you fail to comply by that time, your application will be referred to the City Attorney for review and possible initiation of legal proceedings.

Please contact me to set up the inspection on the phone number provided on this notice.

Sincerely,

Warren Ferry, Inspector (847) 746-4025

Director of Building and Zoning
Richard Ianson (847) 746-4097
richardi@zion.il.us



Inspectors
Barron Peterson (847) 746- 4020
barronp@zion.il.us

Warren Ferry (847) 746-4025
warrenf@zion.il.us

Lead Inspector
Robert Surano (847) 746-4026
bobs@zion.il.us

City of Zion
Building Department
2828 Sheridan Road
Zion, IL 60099

Juan Jaquez (847) 746-4096
juanj@zion.il.us

Josefina Lozano
PO Box 298
Zion IL 60099

08/30/2019

Re: 1503 27TH ST Unit: 7

Dear Chicago Title Land Trust Co. as Trustee JOSEFINA R LOZANO:

The Residential Rental Housing Inspection and Certification Application for the above referenced property was received on 12/28/2018. According to our records an inspection has not been scheduled with the City. This violates Code section 10-180(5)(a).

Please accept this letter as an official notice that an inspection must be scheduled within **30 Days** of this notice but no later than **09/29/2019**. If you fail to comply by that time, your application will be referred to the City Attorney for review and possible initiation of legal proceedings.

Please contact me to set up the inspection on the phone number provided on this notice.

Sincerely,

Warren Ferry, Inspector (847) 746-4025



EXHIBIT E

**IN THE CITY OF ZION, ILLINOIS
ADMINISTRATIVE ADJUDICATION**

**CITY OF ZION,
A Municipal Corporation,
Plaintiff,**

vs.

**TERRY BOONE, TEAM MANAGEMENT
PROPERTIES, LLC**

Defendants.

Property: 1700 JOPPA

Citation No. ZBD 19-083

FINDINGS AND ORDER

This case comes on for a first Hearing for alleged property code violation. The Plaintiff present in the hearing through Inspector Juan Jaquez and represented by City Attorney Eric Stach and the Defendant, Terry Boone was also present in person at the hearing representing himself and representing Team Management Properties, LLC as Managing Member.

This case comes on for hearing as alleged in the Notice of Violation and Summons. Said Notice alleges violation of the following code section for the property located at 1700 Joppa, Zion, Illinois:

10-180 – Rental Housing Inspection and Certification

The Defendant acknowledged that the Defendant had received the Notice and Summons dated August 5, 2019 and wishes to defend against the allegation.

The witnesses were then placed under oath by the Administrative Law Judge/Hearing Officer (ALJ).

RULES GOVERNING HEARING

The rules governing the Administrative Adjudication Hearing are set forth in the City Code and state as follows:

Sec. 3-9. - Hearing procedures.

(a) Parties shall be provided with an opportunity for a hearing before or during which they may exercise any or all of the following rights:

- (1) The right to be represented by counsel, at the party's own expense. This section does not afford a defendant the right to counsel appointed by the city or the code administrator.
- (2) Present and cross-examine witnesses;
- (3) Introduce relevant documentary evidence; and
- (4) Request the hearing officer to issue subpoenas to direct the attendance and testimony of relevant witnesses or the production of relevant tangible evidence.

(b) *Rules of evidence shall not govern.* The formal and technical rules of evidence shall not apply in an administrative adjudication hearing authorized under this chapter. Hearsay evidence, however, may be admitted only if it is the type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

(c) *Standard of proof.* Administrative adjudication hearings are civil in nature. The city shall bear the burden of showing by a preponderance of the evidence that a violation of the Code exists or has occurred. A sworn, written pleading, complaint or citation shall constitute prima facie evidence of the violation.

HEARING

The Plaintiff first requested that the hearings for ZBD-19-084, 19-083 and 19-082 be consolidated for purposes of testimony. The Defendant agreed and simply clarified one that with the exception of one issue with the 2302 Gabriel file, all of the testimony will be the same for all three files. Next, the Plaintiff presented a verbal Motion to add a party defendant to the hearing. Specifically, TEAM MANAGEMENT PROPERTIES, LLC now holds title on the properties and Defendant TERRY BOONE is the Managing Member of the LLC. Defendant BOONE had no objection to adding TEAM MANAGEMENT as a party defendant. The parties then presented testimony which is largely uncontested.

The Defendant, TERRY BOONE (hereinafter "Defendant") then testified. The Defendant provided introductory remarks for purpose of giving some background of his relationship with the City and the fact that he was involved in litigation with the City over similar issues. Each allegation of a violation for each property is considered a separate notice of violation and relevant testimony and evidence will be received and reviewed independently of previous events. The ALJ finds this testimony both irrelevant and unnecessary for purpose of the allegation set forth in these notices and will focus on the testimony related to the case at hand.

The Defendant testified that the 1700 Joppa property involved in this Notice is an 8-unit rental building located within the City of Zion. The Defendant testified that he went to register his property under the ordinance but he refused to sign an affidavit that was part of the application and due to his refusal to sign, the City rejected the application as it is a necessary part of the application. The Defendant then testified that the application affidavit issue was eventually resolved, and he completed the application, paid his registration fee and eventually scheduled the inspections. The Defendant testified that he had spoken to all of his tenants in the building and specifically told those tenants that the tenants did not have to allow the City in for purposes of the inspections. All eight units were occupied, and the City was not given access to any of the eight units. The Defendant claims that he complied with the ordinance as he, as the owner, did not have the right to allow access to the property and that it was the tenants' right and decision to decline access. The Defendant claims that if the City wishes to gain access to the units, the City, under its ordinance, must obtain an Administrative Warrant and he will then allow the City to have access. The Defendant further testified that he has an interest in protecting his tenants.

Under cross-examination, the Defendant admitted that he advised the tenants of their "rights" and further testified that he prepared written documents for the tenants to decline or refuse admission into the units by the City. The Defendant further admitted that his lease provisions with all of the tenants allows him, as the Landlord, to have reasonable access to the units for health and safety reasons.

The City Inspector testified that the registration process requires an application, payment of registration fee and successful inspection. The Inspector testified that after the application was finally completed properly and registration fee paid, the Defendant came into schedule his inspections for the properties. The Defendant tendered written and signed documents advising the City of the tenants' decision to decline admission to the rental units. The Defendant confirmed this testimony. The Inspector attempted to gain admission to the units through the tenants which were denied, and the Defendant refused to grant the City access stating he did not have the right to grant such access.

CODES GOVERNING ALLEGED VIOLATION

The codes governing the facts in this hearing are as follows:

IPMC 301.2 Responsibility. The owner of the premises shall maintain the structures and exterior property in compliance with these requirements, except as otherwise provided for in this code. A person shall not occupy as owner-occupant or permit another person to occupy premises that are not in a sanitary and safe condition and that do not comply with the requirements of this chapter. Occupants of a dwelling unit, rooming unit or housekeeping unit are responsible for keeping in a clean, sanitary and safe condition that part of the dwelling unit, rooming unit, housekeeping unit or premises which they occupy and control.

Sec. 10-180 Rental Housing Inspection and Certification

(1) Definitions: Unless otherwise expressly stated or clearly indicated by context, the following terms as used in this section shall have the meanings indicated in this section:

Code means the Municipal Code of the City of Zion, as amended, all city rules, regulations, and policies, and all state laws, rules, regulations, and policies.

Code official means the director of building and zoning or the director's designee.

Dwelling unit means a building or portion thereof designed to be used as a residence; a single unit providing complete independent facilities for the exclusive use of a person or persons, including, but not limited to, provisions for living, sleeping, eating, cooking, and sanitation. A dwelling unit shall not include motels, hotels, nursing homes, boardinghouses, hospital patient housing, or rooming houses, as those terms are defined in section 102-281.

Initial inspection means the first inspection of a dwelling unit for the purpose of determining compliance with the code.

Let for occupancy or let means to permit, provide or offer possession or occupancy of a dwelling unit to a person who is or who is not the legal owner of record thereof, pursuant to a written or unwritten lease, agreement, license, or similar instrument, or pursuant to a recorded or unrecorded agreement or contract of sale for the premises.

Occupant means a person occupying a dwelling unit or using the property as a legal address for any purpose.

Owner means any person, agent, operator, firm, or corporation having a legal or equitable ownership interest in a property.

Person means a corporation, firm, partnership, association, organization, or any group acting as a unit or legal entity, as well as a natural person.

Property agent means a person, operator, firm, partnership, corporation, or other legal entity designated in writing by the property owner on the owner's certificate of compliance application.

Re-inspection means any inspection of a residential rental property that occurs after the initial inspection.

Residential rental property means any dwelling unit let for occupancy to a person or persons for any amount of rent or compensation and for use as a dwelling unit.

(2) Prohibited conduct

(a) It shall be unlawful for any person to let to another for use or occupancy any residential rental property without a current and valid city-issued certificate of compliance.

(b) It is unlawful for any person to occupy a residential rental property that does not have a valid city-issued certificate of compliance.

(c) It is unlawful to allow any person to occupy a residential rental property that does not have a valid city-issued certificate of compliance.

(d) It is unlawful for any person to violate any provision of this section.

(3) Certificate of compliance - conditions and term

(a) A certificate of compliance will remain valid until the sooner of any of the following occurs:

(i) The city revokes or suspends the certificate of compliance in accordance with this section;

(ii) For properties having to correct violations, 12 months after the date of the certificate of compliance's issuance; For properties having received a certificate of compliance from the city without having to correct any violations, 24 months after the date of certificate of compliance's issuance;

(iii) The residential rental property is damaged or destroyed to the extent that it is no longer habitable.

(b) A certificate of compliance may not be transferred between owners.

(c) A certificate of compliance may not be transferred from one residential rental property to another.

(4) Certificate of compliance – application

(a) Owners shall complete a certificate of compliance application on a form provided by the city and provide all other information reasonably requested by the city. At a minimum, owners shall provide the following information for each residential rental property:

(i) Owner's legal name, home and business address, home, business, and mobile telephone numbers, and e-mail address;

(ii) Property agent's legal name, business address, business and mobile telephone numbers, and e-mail address;

(iii) The address of the residential rental property;

(iv) The residential rental property's square footage;

(v) The application and inspection fee listed in the city's fee schedule.

(b) An owner shall submit a revised application to the city within 30 days of any modifications to the information the owner previously provided on a certificate of compliance application.

(c) Applications for certificates of compliance shall be filed within 120 days of the effective date of this section. Thereafter, applications for certificates of compliance shall be filed at least 30 days before the certificate of compliance's expiration.

(d) Each certificate of compliance shall contain the certificate's date of issuance, the owner's name, and the address of the residential rental property that the certificate of compliance covers.

(e) Owners that fail to submit a certificate of compliance application in accordance with the timeframes set forth in subsection 10-180(4) shall be required to pay an application and inspection fee equaling 200 percent of the application and inspection fee listed in the city's fee schedule.

(f) The city may issue a temporary certificate of compliance when, in the opinion of the code official, none of the violations observed threaten life-safety or health. Temporary certificates of compliance shall expire no later than 60 days after issuance.

(5) Inspections

(a) Upon submitting a certificate of compliance application, the owner shall schedule with the city an inspection within 30 days of the date the application was received of the residential rental property.

(b) Each inspection made by the code official shall be for the purpose of determining compliance with the code.

(c) The code official shall issue a certificate of compliance only upon finding that there is no condition that would constitute a hazard to the health and safety of the occupants and the residential rental property is otherwise fit for occupancy. If such findings are not made, the code official shall issue a notice to comply to the owner or property agent. Upon re-inspection and evidence of compliance, the code official shall issue a certificate of compliance.

(d) The code official shall issue certificates of compliance on the condition that the residential rental property remains in a safe, habitable, and code-compliant condition. If upon re-inspection the city determines that conditions exist which constitute a hazard to the occupants' health or safety, the city may immediately suspend or revoke the certificate of compliance by mailing notice to the owner or property agent.

(e) The code official shall maintain a city-wide plan of all residential rental properties occupied or held or offered for occupancy based on certificate of compliance applications and other reasonably available information.

(f) The code official shall establish and maintain a schedule of inspections necessary to carry out the intent and purpose of this section.

(g) In the event an owner, property agent, or occupant of a residential rental property refuses to allow the code official to inspect a residential rental property, schedule a time to inspect the residential rental property, or otherwise fails to comply with the code, the city reserves all remedies to secure compliance with this section, including, without limitation, seeking an administrative search warrant or suspending or revoking an owner's certificate of compliance.

(h) Violations discovered during inspection shall be identified in a written notice to the owner or the property agent. If the identity of the owner cannot be readily ascertained, the notice shall be

mailed to the last taxpayer of record shown on the records of the Lake County Treasurer. Violation notices shall be mailed to the owner or property agent within 30 days of their discovery by the code official.

(i) The code official shall complete as many re-inspections as are reasonably necessary to ensure that appropriate corrective action has been taken to bring the residential rental property into compliance with the code.

(6) Appeals

(a) Any person receiving a violation notice pursuant to this section, any person denied a certificate of compliance, or any person whose certificate of compliance has been suspended or revoked shall have the right to appeal to the planning and zoning commission. Such an appeal shall be in writing and filed with the code official within 14 days of the date of the code official's action. The appeal shall contain a complete statement of the reasons for the appeal, the specific facts supporting the appeal, and all evidence the appellant intends to rely on to support the appeal.

(b) The planning and zoning commission shall schedule a meeting to consider the appeal within 30 days of receiving the appeal. The planning and zoning commission may consider all facts, evidence, and testimony presented by the appellant and the code official, and all other information the planning and zoning commission determines to be relevant to the appeal.

(c) The planning and zoning commission shall send written notice of its decision to the owner within 30 days of hearing the appeal.

(7) Other inspections: Nothing in this section shall restrict, limit, or alter the city's authority to inspect any property nor impose penalties for violations of the code.

(8) Penalty

(a) In addition to any other remedy, including, without limitation, remedies at law and in equity, any person violating the terms of this section shall be fined not more than \$750.00 for each day the violation continues nor less than \$100.00 for each day the violation continues. Each day a violation continues shall be a separate offense.

(b) Every act or omission by any person that constitutes a violation of this section 10-180 shall be deemed to be an act or omission of the owner and punishable in accordance with the terms of this section 10-180.

FINDINGS

In reviewing the ordinances and facts of the case, the facts and evidence as set forth through verbal testimony are relatively uncontested. The Plaintiff alleges that the Defendant eventually applied for the certificates and paid the application fee. The Plaintiff was not able to inspect any

of the units as the Defendant advised the tenants that they did not have to allow the City access and that the Defendant drafted documentation where the tenants indicated that they would not allow access and had the tenants signed said documents. The Defendant agreed to all of these facts and admitted that as the Owner/Landlord, his leases allow for him to gain access to the property for health and safety reasons. The Defendant claims that he fully complied with the code and the proper course of action under the code is that the City must obtain an Administrative Warrant to gain access.

Thus, according to the Defendant the argument is whether the Defendant complied with the ordinance based upon his actions. The Defendant claims that he did not specifically refuse to allow the City access but rather it was the tenants refusal. The Defendant maintains this position even though he advised the tenants that they did not have to allow the City access and that he drafted the documents submitted to the City advising the City that the tenants would deny access. These arguments are misplaced.

IPMC 302.1 establishes the Defendant responsibility as a property owner to maintain the property in a clean and safe manner as dictated by the code. This includes, but is not limited to, the Rental Housing Inspection ordinance. Zion Property Maintenance Code (ZPMC) *Sec. 10-180 (2) (a) and (c)* specifically prohibits an Owner, Landlord or Property Manager to allow someone to lease or occupy a rental property that does not have a valid city-issued certificate of compliance. *Sec. 10-180* requires that the Owner of the rental property must first complete an application for the registration, then pay a registration fee upon the City's acceptance of a properly completed application and finally to schedule and pass a safety inspection. *Sec. 10-180 (5)* clearly sets forth the purpose of the inspection is to make sure the residential rental property is and remains in a safe, habitable and code compliant condition. The code mandates that the certificate of compliance be issued if there are no conditions that constitute a hazard to the health and safety of the occupants. The obligations mandated in the code rest upon the owner and not the tenants.

The Defendant admitted that his lease allows him to enter the rental units at any time for health and safety reasons but he contends that it does not include the City's inspection under this code. Thus, if there is a health and safety reason requiring the Defendant to gain access, he can, without issue, enter the property to remedy such a condition. However, his claim that he cannot let the City in for a health and safety inspection is without merit. The duty under the code and ordinance is on the owner of the property and if the owner is in need to have a health and safety inspection, the owner can gain access to the units. In this case, the Defendant not only refused but at the very least advised and encouraged his tenants to deny access. Given his advice to the tenants and his drafting of the documents that advised the City they would refuse entry, it is more likely that the Defendant willfully and specifically instructed the tenants to not to allow entry.

Since it is the Defendant's duty and obligation to comply with the Code and his actions clearly indicated that he did not and would not comply in allowing the City access under the codes, the Defendant is liable for the violation.

Next, the Defendant claims that the City must obtain an Administrative Warrant to gain access as that is what the code requires. This is a misinterpretation of the code. Sec. 10-180 (5)(g) states in part:

(g) In the event an owner, property agent, or occupant of a residential rental property refuses to allow the code official to inspect a residential rental property, schedule a time to inspect the residential rental property, or otherwise fails to comply with the code, the city reserves all remedies to secure compliance with this section, including, without limitation, seeking an administrative search warrant or suspending or revoking an owner's certificate of compliance. (emphasis added).

While the code contemplates that the City may wish to seek an administrative warrant, it reserves to seek out whatever remedy is deemed appropriate under the law. Consistent with the Administrative Hearing procedures in the code, Sec. 10-180 (8) allows for a hearing and upon the finding of liability a fine of up to \$750.00 per day and a minimum of \$100.00 per day with each day of violation constituting a new offense.

Given the nature of the violation, testimony and evidence, the Defendant is assessed a fine in the amount of \$750.00 per day since August 5, 2019 (the date of the Notice) for the violation and the fine of \$750.00 per day shall continue to increase daily for everyday the property remains in violation and will cease upon the violations being brought into compliance.

Entered:  9/10/19
Administrative Hearing Officer Date

This order constitutes the final administrative decision of the hearing officer. You may appeal this Order to the Circuit Court of Lake County within 35 days, from the date of receiving the Administrative Decision, by filing a civil lawsuit against the City of Zion and by paying for all transcript fees and by paying the appropriate state mandated filing fees.