

IN THE IOWA DISTRICT COURT FOR SIOUX COUNTY

AMANDA L. WINK, AN INDIVIDUAL, BRYAN C. SINGER, AN INDIVIDUAL, ERIKA L. NORDYKE, AN INDIVIDUAL, BEVERLY A. VAN DAM, AN INDIVIDUAL, JOSHUA L. DYKSTRA, AN INDIVIDUAL, 3D RENTALS, LLC, DP HOMES, LLC,

Plaintiffs,

v.

CITY OF ORANGE CITY, AND KURT FREDERES, IN HIS OFFICIAL CAPACITY AS ORANGE CITY CODE ENFORCEMENT OFFICER AND BUILDING INSPECTOR,

Defendants.

Case No. _____

PETITION AT LAW

COME NOW Petitioners Amanda L. Wink, Beverly A. Van Dam, Bryan C. Singer, Erika L. Nordyke, Joshua L. Dykstra, 3D Rentals, LLC, and DP Homes, LLC (the “Plaintiffs”), who by and through their attorneys pray for a declaratory judgment that Orange City’s ordinance requiring nonconsensual rental home inspections pursuant to administrative warrants without individualized probable cause is unconstitutional under Article I, Section 8 of the Iowa Constitution, as well as injunctive relief preventing these inspections. In support thereof petitioners state the following:

DIVISION I—PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Amanda Wink rents a home located in Orange City, at 313 5th St. NW, Iowa 51041, which is currently subject to a rental inspection by Orange City’s Code Enforcement Office. Amanda cares deeply about maintaining the privacy of her home. She

values the right to determine who will enter her home and who will have access to every part of her home.

2. Plaintiff Beverly “Bev” Van Dam, through 3D Rentals LLC, owns the property located at 313 5th St. NW, where Amanda resides. Bev is unwilling to allow Orange City to intrude into her tenants’ homes without her consent and is committed to helping her tenants protect their rights.

3. Plaintiffs Bryan Singer and Erika Nordyke rent a home located in Orange City, at 527 Delaware Ave. SW, which is currently subject to a rental inspection by Orange City’s Code Enforcement Office. Bryan and Erika care deeply about maintaining the privacy of their home. They value the right to determine who will enter their home and who will have access to every part of their home.

4. Plaintiff Josh Dykstra, through DP Homes, LLC, owns the property located at 527 Delaware Ave. SW, where Bryan and Erika reside. Josh is unwilling to allow Orange City to intrude into his tenants’ home without their consent and is committed to helping his tenants protect their rights.

5. Defendant Orange City (“Orange City” or the “City”) is a municipality duly organized and existing under the laws of the State of Iowa with offices located at 125 Central Ave. SE, Orange City, IA 51041.

6. Defendant Kurt Frederes is and was, at all relevant times, the City’s Code Enforcement Officer and Building Inspector with an office located at 125 Central Ave. SE, Orange City, IA 51041. Mr. Frederes is sued in his official capacity.

7. Plaintiffs seek to vindicate their right to be free from this unreasonable governmental intrusion into their private property under Article I, Section 8 of the Iowa

Constitution, and seek declaratory and injunctive relief for the purpose of determining a question of actual controversy between the parties as hereinafter alleged pursuant to Article I, Section 8 of the Iowa Constitution.

8. This action seeks a declaratory judgment and supplemental relief pursuant to Iowa Rules of Civil Procedure 1.1101 and 1.1106. This Court has jurisdiction over this matter pursuant to Iowa Code § 602.6101.

9. Venue is proper in this district pursuant to Iowa Code § 616.3(2) because the cause arose in Sioux County. The defendants are public officials located within Sioux County.

DIVISION II—FACTUAL AND LEGAL BACKGROUND

The Controversy Over the Orange City Inspection Ordinance

10. On or about February 15, Orange City, Iowa, enacted Ordinance No. 825 (the “Ordinance”), amending its Code of Ordinances to require landlords and tenants to submit to mandatory inspections of rental properties within Orange City every five years.

11. The Ordinance broadly defines “[r]ental unit” as “[a]ny building or portion thereof” used by “one or more persons as a dwelling place,” including “sleeping, eating, or general habitation,” as long as the renter or renters “exchange cash or other valuable considerations for the right to occupy the space.” *Id.* § 4.02(1).

12. Under the Ordinance, inspections are to occur every five years but may be conducted sooner if the City receives complaints of a possible violation during that five-year period. *Id.* § 4.08.

13. The periodic inspections need not be predicated on any particular reason to suspect that a violation of any law has occurred or is occurring in the targeted rental property.

14. The mere existence of a building occupied by a paying tenant is all that is needed for Orange City to demand access to the interior of the property, including any occupied dwelling unit, and to obtain an administrative search warrant if access is refused. *Id.* § 4.09.

Defendants' Attempt to Inspect the Property of Amanda Wink and Bev Van Dam

15. On February 22, 2021, Orange City sent Plaintiff Bev Van Dam a letter and application to register her rental properties.

16. On April 26, 2021, Bev sent a letter to Orange City expressing her support for Amanda's right to refuse an inspection of her home. In that letter, Bev also stated that her payment of the rental application fee is being made under protest and in no way concedes that the nonconsensual inspection of a tenant's home is appropriate.

17. On April 26, 2021, Amanda sent a letter to Orange City asserting her right, under Article I, Section 8 of the Iowa Constitution, to refuse an inspection in the absence of a warrant supported by individualized probable cause. Amanda's letter also stated that any actions taken to punish her or her apartment's owners for exercising their rights—charging of costs, revocation of the rental permit, or any fines—would violate the Iowa Constitution.

18. On May 13, 2021, Bev received a letter from Defendant Kurt Frederes stating that the City reviewed her and 3D Rentals's protest letter but intended to “continue to follow the process of the Rental Ordinance including inspection of your property.” The letter also stated that the City would contact Bev to schedule an inspection and “expect to complete the inspections on the property.” The letter concluded that, “[i]n the event that the inspections are refused, the City at that time will take the necessary steps to complete the process per the terms of the ordinance.”

19. On May 13, 2021, Amanda received a letter from Kurt Frederes stating that the City reviewed her protest letter but intended to “continue to follow the process of the Rental Ordinance including inspection of your property.” The letter also stated that the City would contact Amanda to schedule an inspection and “expect to complete the inspections on the property.” The letter concluded that, “[i]n the event that the inspections are refused, the City at that time will take the necessary steps to complete the process per the terms of the ordinance.”

Defendants’ Attempt to Inspect the Property of Bryan Singer, Erika Nordyke, and Joshua Dykstra

20. On February 22, 2021, Orange City sent Plaintiff Dykstra a letter and application to register his rental properties.

21. On April 26, 2021, Josh sent a letter to Orange City expressing his support for Bryan and Erika’s right to refuse an inspection of their home. In that letter, Josh also stated that his payment of the rental application fee is being made under protest and in no way concedes that the nonconsensual inspection of a tenant’s home is appropriate.

22. On April 26, 2021, Bryan and Erika sent a letter to Orange City asserting their right, under Article I, Section 8 of the Iowa Constitution, to refuse an inspection in the absence of a warrant supported by individualized probable cause. Bryan and Erika’s letter also stated that any actions used to punish them or their apartment’s owners for exercising their rights—charging of costs, revocation of the rental permit, or any fines—would violate the Iowa Constitution.

23. On May 13, 2021, Josh received a letter from Kurt Frederes stating that the City reviewed his and DP Homes’s protest letter but intended to “continue to follow the process of the Rental Ordinance including inspection of your property.” The letter also stated that the City would contact Josh to schedule an inspection and “expect to complete the inspections on the

property.” The letter concluded that, “[i]n the event that the inspections are refused, the City at that time will take the necessary steps to complete the process per the terms of the ordinance.”

24. On May 13, 2021, Bryan and Erika received a letter from Defendant Kurt Frederes stating that the City reviewed their protest letter but intended to “continue to follow the process of the Rental Ordinance including inspection of your property.” The letter also stated that the City would contact Bryan and Erika to schedule an inspection and “expect to complete the inspections on the property.” The letter concluded that, “[i]n the event that the inspections are refused, the City at that time will take the necessary steps to complete the process per the terms of the ordinance.”

Overview of the Orange City Rental Inspection Ordinance

25. The Ordinance sets forth the “requirements of a rental housing inspection program.” Ordinance, § 4.01.

26. The Ordinance requires landlords to obtain, and keep current, a rental permit to “engage in the renting of dwelling units” within Orange City. *Id.* § 4.04.

27. The City will not approve a landowner’s rental permit application until the rental units identified in that application have been inspected. *Id.* § 4.04(2).

28. Orange City issues and renews rental permits when properties are inspected. *Id.* § 4.08. Under the Ordinance, landlords are also required to allow inspectors to enter a rental unit “at reasonable times.” *Id.* § 4.09.

Orange City Can Obtain Administrative Warrants with No Individualized Probable Cause

29. If a landlord or tenant objects to the inspection, Orange City inspectors “shall have recourse to the remedies provided by law to secure entry, including, but not limited to, obtaining an administrative search warrant to search the rental unit.” *Id.*

30. The concept of an administrative warrant comes from *Camara v. Municipal Court*, 387 U.S. 523 (1967), in which the U.S. Supreme Court held a warrant was required to enter a home to conduct a nonconsensual housing inspection. 387 U.S. at 539. The Court did not require these warrants to be supported by traditional individualized probable cause. *Id.* at 538. Instead, “probable cause” for these warrants was to mean “reasonable legislative or administrative standards.” *Id.*

31. Reasonable legislative or administrative standards under *Camara* could be factors like “the passage of time, the nature of the building (e.g., a multi-family apartment house), or the condition of the entire area” and could “vary with the municipal program being enforced.” *Id.*

32. Orange City’s enforcement of its mandatory inspection of rental properties against unwilling tenants and landlords shows *Camara*’s administrative warrants in action. Administrative warrants for rental inspections in Orange City do not require any reasonable belief that a code violation exists, has existed, or will exist in a targeted rental home.

33. If a landlord or tenant refuses entry, that property will not be granted a rental permit. Ordinance, § 4.04(2). Failure to obtain a rental permit results in a violation of the Ordinance and means that the rental unit can no longer be rented to a tenant. *Id.* § 4.04(5). The Ordinance also allows Orange City to remove a tenant from their home if a violation of the Ordinance goes uncorrected. *Id.* § 4.15. As a result, a tenant who refuses an inspection prevents the issuance of a rental permit. Because it is a violation of the Ordinance to live in a property without a rental permit and such violations can result in a tenant’s eviction, a tenant can ultimately find themselves evicted after objecting to a mandatory search of their home. *Id.*

The Opaque Process for Obtaining an Administrative Search Warrant in Iowa

34. Application for an administrative search warrant occurs in an *ex parte* proceeding before an Iowa magistrate or other judicial officer. Iowa Code § 808.3(1). There is no requirement in Iowa law that a court filing be created before a search warrant is executed. *See generally* Iowa Code Chapter 808. Plaintiffs have no opportunity to contest in a judicial proceeding the validity of an administrative warrant because they will only learn about the warrant’s existence when it is executed. An action for trespass against a city official executing an administrative warrant is not a suitable means to litigate the underlying constitutionality of the city’s inspection regime.

The Inspection Ordinance Authorizes—and Orange City Conducts—Intrusive Inspections

35. When inspections take place, the Ordinance authorizes the City to search any part or portion of a rental home for conformity with the Ordinance.

36. The Ordinance vaguely requires inspectors to ensure that rental properties are “consistent with the applicable building codes” adopted by Orange City. *Id.* § 4.08(3). The rules and standards set forth by the International Building Code are applicable to all buildings within Orange City. Orange City Building Code, Ch. 1, Art. 1, § 1.02(A).

37. As a supplement to the scant guidance in the Ordinance, the City publishes a Rental Inspection Form (the “Inspection Form”). *See* Rental Inspection Form, City of Orange City, <https://orangecityiowa.com/wp-content/uploads/2021/03/Rental-Housing-Inspection-Form.pdf>.

38. The Checklist contains vague standards that open up the entire home to inspection. The checklist requires inspectors to ensure that all door frames are in “good condition,” that all interior doors “open easily,” and that all windows are “sound.” *Id.*

39. Inspectors can enter any interior room and open any interior door to ensure compliance with the Inspection Form. Nothing in the Inspection Form places any restriction on the locations inside a rental property in which such inspection authority may be exercised.

40. The Inspection Form allows inspectors to open and search all closets without having to show that they suspect there is a safety concern stemming from closet lightbulbs. In fact, under the administrative warrant standard, inspectors are able to obtain a warrant giving them access to all the closets in a home without even showing that the house in question has closet lightbulbs at all.

41. The Inspection Form also allows inspectors to view and handle personal property within the home. The Inspection Form permits inspection of a home's entire "electrical system," including its fixtures and outlets. *Id.*

42. Under the Inspection Form, inspectors are able to check to make sure all outlets are operational. Because some outlets are behind beds, inspectors must move those beds to check all outlets. Some tenants store personal items under their beds and these items will be revealed when the bed is moved.

43. The Inspection Form authorizes the City to enter and search bedrooms, living rooms, hallways, bathrooms, kitchens, attics, utility rooms, and basements, and to search inside storage areas, bedroom closets, kitchen cabinets, bathroom cabinets, and bathroom vanities. Furniture and appliances, such as refrigerators, stovetops, washers, stereos, and even computers, are within the scope of the inspection regime established by the City and the Ordinance.

44. Orange City's inspections will reveal private, personal details about tenants. There are religious books in Amanda's home that would be seen during a nonconsensual inspection. There are medications in Bryan and Erika's home that would be seen during a

nonconsensual inspection. Amanda, Bryan, and Erika do not want a stranger to view the private religious, political, or medical details of their lives.

45. Nothing in the Ordinance prevents inspectors from bringing police into tenants' homes or from sharing information with law enforcement or any other person.

Injury to Plaintiffs Amanda Wink and Bev Van Dam

46. Bev does not want Orange City inspectors to enter the portions of her properties that are not open to the public.

47. Amanda does not want Orange City inspectors entering her home against her will and searching every area of her home. Her home is not open to the public. Even invited guests do not have permission to search her closets and cabinets or to look under her beds.

48. Bev and Amanda do not want to be subjected to continued, repeated attempts to obtain warrants that are not supported by individualized probable cause of a housing-code violation.

49. Without a judgment declaring Orange City's Ordinance to be illegal and an injunction against its enforcement, Bev and Amanda will be subjected to repeated attempts to obtain warrants, and to unconstitutional searches. Amanda plans to continue living in her home for many more years, through one or more additional five-year inspection cycles. Bev does not plan to sell Amanda's home and intends to continue to rent out the home through one or more additional five-year inspection cycles.

Injury to Plaintiffs Bryan Singer, Erika Nordyke, and Joshua Dykstra

50. Josh does not want Orange City inspectors to enter the portions of his properties that are not open to the public.

51. Bryan and Erika do not want Orange City inspectors entering their home against their will and searching every area of their home. Their home is not open to the public. Even invited guests do not have permission to search their closets and cabinets or to look under their beds.

52. Josh, Bryan, and Erika do not want to be subjected to continued, repeated attempts to obtain warrants that are not supported by individualized probable cause of a housing-code violation.

53. Without a judgment declaring Orange City's Ordinance to be illegal and an injunction against its enforcement, Josh, Bryan, and Erika will be subjected to repeated attempts to obtain warrants, and to unconstitutional searches. Bryan and Erika plan to continue living in their home for many more years, through one or more additional five-year inspection cycles. Josh does not plan to sell Bryan and Erika's home and intends to continue to rent out the home through one or more additional five-year inspection cycles.

COUNT I—VIOLATION OF ARTICLE I, SECTION 8 OF THE IOWA CONSTITUTION

54. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in paragraphs 1 through 53 above.

55. Article I, Section 8 of the Iowa Constitution protects the right of individuals to be secure in their "persons, houses, papers and effects." It does not allow search warrants that are not based upon individualized probable cause to believe that a violation of the law has occurred and that evidence of such violation could be found in the property to be searched.

56. Article I, Section 8 requires a higher standard for issuing a warrant to search a home than does the Fourth Amendment as interpreted in *Camara*.

57. Orange City's Ordinance authorizes the City's inspectors to conduct deeply intrusive searches into the homes of all Orange City tenants based on administrative warrants without individualized probable cause. The Ordinance deprives both tenants and landlords, including Plaintiffs, of their security in their houses, papers, and effects.

58. Plaintiffs have a right under Article I, Section 8 of the Iowa Constitution to an independent judicial determination that Orange City has individualized probable cause to search their private property, which must consist of individualized suspicion that the law has been violated within the targeted property, before Defendants are allowed to intrude into and search Plaintiffs' home and private property under the Ordinance.

59. The Ordinance imminently threatens Plaintiffs and others similarly situated with a violation of their rights protected by Article I, Section 8 of the Iowa Constitution.

60. Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or minimize the irreparable harm to their constitutional rights imminently threatened by the mandatory inspection requirements of the Ordinance.

61. Unless the mandatory inspection requirements of the Ordinance are declared unconstitutional, as applied by Defendants, and Defendants, their agents, employees, servants, and representatives are permanently enjoined from enforcing such requirements except in accordance with the traditional individualized probable cause standard of Article I, Section 8 of the Iowa Constitution, Plaintiffs are imminently threatened by great and irreparable harm consisting of the deprivation of their rights guaranteed by Article I, Section 8 of the Iowa Constitution.

62. Unless Defendants are required to apply for a warrant based upon traditional, individualized probable cause, Plaintiffs are imminently threatened by great and irreparable harm

consisting of the deprivation of their rights guaranteed by Article I, Section 8 of the Iowa Constitution.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request the following relief:

- A. Declare unconstitutional the mandatory inspection requirements of Ordinance No. 825 against the Plaintiffs and others similarly situated as heretofore alleged;
- B. Permanently enjoin Defendants from seeking warrants to conduct inspections authorized under the Ordinance with less than traditional, individualized probable cause;
- C. Award Plaintiffs nominal damages of \$1.00 for, among other things, the burden of defending themselves against unconstitutional warrant applications, and for the necessity of defending themselves against Orange City's attempts to enter their homes;
- D. Award such other relief as the Court deems just, equitable, and proper.

Dated this 26th day of May 2021.

Respectfully submitted,

/s/ Alan R. Ostergren
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*Applications for admission *pro hac vice* to be filed.