IN THE IOWA DISTRICT COURT FOR SIOUX COUNTY

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,** **vs.** **CITY OF ORANGE CITY AND KURT FREDERES, In His Official Capacity as Orange City Code Enforcement Officer and Building Inspector,** **Defendants.**	**CASE NO. EQCV029175** **RULING ON MOTIONS FOR SUMMARY JUDGMENT**

Hearing was held on the parties' respective Motions for Summary Judgment on May 12, 2023, before the undersigned as the judge assigned this matter. Appearing for the Plaintiffs was John Wrench. Appearing for the Defendants was Zach Clausen. The hearing was reported by Cheryl Lake, CSR-RMR. Following the hearing, the matter was taken under advisement and the Court now addresses the Motions collectively as follows.

"Now one of the most essential branches of English liberty is the freedom of one's house. A man's house is his castle; and while he is quiet, he is as well guarded as a prince in his castle." "This writ, if it should be declared legal, would totally annihilate this privilege." James Otis, Esq. before the Massachusetts Superior Court February 24, 1761[1]

[1]. Otis is believed to have invoked the words of Edward Coke an English Judge and lawyer 1552-1634. Otis represented a group of merchants who challenged Writs of Assistance before the Massachusetts Superior Court. Writs of Assistance and the resistance by the colonists to them was instrumental in the formulation and support for the 4th Amendment to the U.S. Constitution. Article I Section 8 of the Iowa Constitution largely mirrors the 4th Amendment and is intended to convey similar protections. The protections provided by these Constitutional provisions represent the vox populi at the time of their passage which continues to this day. While these protections in the present day are not as robust as they have been historically, they remain a mainstay of legal jurisprudence.

PROCEDURAL SETTING

On May 26, 2021, the Plaintiffs filed their Petition seeking the following relief:

A. Declare unconstitutional the mandatory inspection requirements of Ordinance No. 825 against the Plaintiffs and others similarly situated;
B. Permanently enjoin Defendants from seeking warrants to conduct inspections authorized under the Ordinance with less than traditional, individualized probable cause; and
C. Award Plaintiffs nominal damages of $1,000 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.

Plaintiffs also sought a temporary injunction separately filed from the Petition. The Defendants filed a Motion to Dismiss raising issues of ripeness of the claim and standing of the Plaintiffs to challenge the ordinance. The Motion for a Temporary Injunction does not appear to have been set or ruled on. The Motion to Dismiss was denied. The issue of ripeness and standing were renewed as part of the record on the Motions for Summary Judgment.

The Defendants filed their Motion for Summary Judgment on March 17, 2022. The Plaintiffs filed their Motion for Summary Judgment on March 27, 2023. Plaintiff Amanda L. Wink dismissed her cause of action on November 29, 2022, as she was no longer a tenant subject to the Ordinance.

The parties submitted their briefs and appendices to the Motion and the matter was submitted for ruling on May 12, 2023, by the undersigned.

FINDINGS OF FACT

Ordinance No. 825 is the ordinance challenged by this action. Pertinent provisions of the ordinance are set forth below:

ARTICLE 4 - RENTAL HOUSING UNITS

4.01 PURPOSE. It is the purpose of this ordinance to detail the requirements of a rental housing inspection program. To protect, preserve and promote the physical health and social wellbeing of the people. To prevent and control the incidence of communicable diseases, to reduce environmental hazards to health, to regulate rental dwellings for the purpose of maintaining adequate sanitation and to protect the life safety and possessions of the people.

4.02 DEFINITIONS. For the purpose of this Rental Housing Units Ordinance, certain terms and words are hereby defined:

1. Rental unit: Any building or portion thereof which is allowed to be occupied by one or more persons as a dwelling space which includes one or more of the following activities: sleeping, eating, or general habitation. As a condition of occupying the space, the renter or renters exchange cash or other valuable considerations for the right to occupy the space.

2. Exempt Rentals: Rental units that are inspected by a certified third-party inspection organization will not require an inspection from the City of Orange City. The Code Enforcement Department of the City of Orange City will maintain a list of all rental units that are exempt from the inspection requirements of this ordinance.

3. Vacation/Guest House: A vacation/guest house is defined as a furnished apartment, house, dwelling unit, or professionally managed condominium complex rented out on a temporary basis to guest or guests.

4. Newly Constructed Units: Any unit that has been newly constructed within the last year.

5. Violation: A violation of all applicable building codes that if allowed to remain as found would constitute an immediate threat to the safety of those living in the rental unit. (Examples of major violations could include but are not limited to: improper venting of combustion air, missing or inoperable smoke detectors, improper electrical wiring or equipment, lack of or damaged water heater, or lack of required egress)

4.08 RENTAL INSPECTION. The Code Enforcement Department shall inspect all rental units being offered as a rental in the City of Orange City every five(5) years. As part of the revolving inspection process the Code Enforcement Department may require, that a re-inspection be held at a time sooner than five(5) years if concerns or violations were found during previous inspections or the Code Enforcement Department receives complaints of possible Building Code violations of a rental unit during the five (5) year term.

Inspections of a rental unit shall be subject to the following terms and conditions:

1. The City shall notify the owner/landlord of its intent to inspect a rental unit at least 15-days prior to a scheduled inspection. It is the owner/landlord's responsibility to notify the tenants of the date/time of inspection prior to the inspection.

2. Inspections shall not be conducted without the property owner or owner's representative present unless owner or owner's representative gives their permission to the City to inspect without them being present prior to the inspection.

3. Inspections shall be consistent with the applicable building codes adopted by the City of Orange City.

4. All fees are to be collected before inspection at time of application.

5. If the inspector arrives at the time scheduled and no person is available to show the premises to him/her, the owner/landlord shall pay a fifty dollar($50.00) "no show" fee.

6. Items not inspected as part of this ordinance include but are not limited to:
   a. Asbestos
   b. Lead based paint
   c. Complaints between tenants
   d. Rental agreements

4.09 RIGHT OF ENTRY. If it is necessary for a code official to conduct an inspection in order to enforce the provisions of this code and, in doing so, requires access to the rental. The inspector may enter the rental at reasonable times to inspect or to perform duties imposed by this policy. If such rental is occupied the inspector shall present credentials to the occupant before entry. If entry is refused the inspector 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.

This ordinance was enacted by the City of Orange City (City) on February 15, 2021. The City is not required by Iowa law to enact an ordinance like No. 825, but is permitted to do so under **Iowa Code Section 364.17(6)**. The City is legally permitted to enact this ordinance and regulatory scheme. The challenge here is not to the enactment or the City's

authority, but rather to aspects of the ordinance itself. Prior to the enactment of this ordinance, no rental properties in the City were subject to inspections or registration requirement. It appears that the City began to consider enacting an ordinance like No. 825 when it became aware of other neighboring communities enacting ordinances concerning rental property.

Kurt Frederes is the City code enforcement officer and he has indicated that prior to the enactment of this ordinance, the City was aware of approximately four rental properties that had signs of exterior deterioration. Each of these concerns were able to be addressed under the City's general housing code at the time. The City did hold an informational meeting in the community to discuss the ordinance and it also responded to inquiries on the ordinance. The ordinance does contemplate alternative inspection options, but it does not permit or allow self-certification by property owners. Other alternatives to mandatory inspections were not considered.

The ordinance requires property owners to obtain a rental permit prior to renting the property and similarly for a renewal. Fees are collected for the permits and renewals. The City does not warrant or guarantee the safety, fitness, or suitability of any rental property in the City. Further, it states that owners and occupants of rental properties should take whatever steps necessary or appropriate to protect their interests, health, safety and welfare and the City sees this as asking renters to make their own determination concerning the safety and suitability of rental properties.

The inspections are required every five years per the ordinance. The ordinance only pertains to rental units and not to owner-occupied housing. The City contacts the property owner to initiate the inspections. Tenants are required to submit to the inspection

of their residences whether the inspection is done by the City or a third-party inspector. If the tenant objects to the inspection, the City's response is to obtain an administrative search warrant under section 4.09 of the ordinance. No further detail is provided in the ordinance as to what it requires in order for City to seek an administrative search warrant. The ordinance does not set forth any requirements, details, standard or level of proof, nor process or procedure for obtaining the administrative search warrant. From a review of the ordinance, the process entails the following:

- Documentation supporting the warrant, any violations of City code, the reasons a warrant is sought are not required in the request for an administrative warrant
- No standard of proof is established in order to obtain the warrant
- The warrant proceedings are done ex parte and no prior notice is required
- Tenants who will have their residence searched receive no prior notice of the search warrant application process and thus no opportunity to contest the warrant or the inspection of their residence
- The ordinance does not limit or restrict the scope of the administrative searches
- Law enforcement is not prevented from accompanying the rental unit inspector
- The City ordinance, rental housing checklist, or rental inspection form used by the City inspector places no restriction on the location inside the property where the inspector can search, and the City takes the position that the ordinance authorizes the City inspector to enter any interior room and open any interior door, including closets, during the search.

- The ordinance does not prevent the inspector from informing law enforcement about anything the inspector has observed in the rental property during the inspection.
- Evidence of illegal activity in the rental property observed by the inspector is reported to the City Attorney

Plaintiffs Brian Singer and Erika Nordyke are tenants of DP Homes, LLC, which is a business owned by Plaintiff Joshua Dykstra. Plaintiff Beverly Van Dam is a landlord and owns rental properties through a business known as 3D Rentals, LLC. Each of these Plaintiffs have interacted with the City with regard to the ordinance at issue here. The City notified Dykstra and Van Dam via letter of the City's approval of the ordinance at issue and provided them with a registration form to register their rental properties that would be subject to the ordinance. Singer and Nordyke sent a letter to the City on April 27, 2021, stating that they would not voluntarily allow the City or a private inspector into their residences. They relied on the Iowa Constitution Article 1 Section 8 in taking this posture with the City. That letter appears below in its entirety from the Plaintiffs' appendix:

April 27, 2021

Via E-mail

City of Orange City
Town Hall
125 Central Avenue SE
Orange City, IA 51041
code-enf@orangecityiowa.com

Re: ***Rental inspection for 527 Delaware Ave. SW, Orange City, IA 51041***
Refusal to submit to a voluntary inspection

Dear Mr. Kurt Frederes:

This letter is submitted by the tenants residing at **527 Delaware Ave. SW**: Bryan and Erika Singer.

We will not voluntarily allow Orange City or a private inspector inside the residence located at 527 Delaware Ave. SW. We therefore hereby invoke our rights under Article I, Section 8 of the Iowa Constitution, which requires the government to obtain a warrant based upon individualized probable cause before it can conduct a rental inspection without consent. We assert that Article I, Section 8 requires the government to meet a higher standard of probable cause to obtain a warrant to search a rental home than the standard articulated in *Camara v. Municipal Court*, 387 U.S. 523 (1967) (authorizing municipalities to obtain administrative warrants supported only by "reasonable legislative or administrative standards" to conduct nonconsensual rental-housing inspections).

Further, please be advised that fining any of the undersigned for refusing an iospection, or failing to issue or renew a rental permit for refusing an inspection, or in any way punishing the undersigned for refusing an inspection, would be an unconstitutional burden on simply exercising constitutional rights, which itself is unconstitutional. Therefore, in any action that the City takes to obtain an administrative warrant, we expect it will not request any of us, or our property owners, 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, and that no rental permits will be placed in any jeopardy for refusing to allow an inspection. Any of these actions—charging of costs, revocation of the rental permit, or fines for not scheduling or consenting to an inspection—would violate a clearly established constitutional right guaranteed by Article I, Section 8 of the Iowa Constitution.

The owners of our rental home have always been responsive to any maintenance requests, above and beyond what is required by statute. We find an obtrusive government inspection unnecessary and unwarranted.

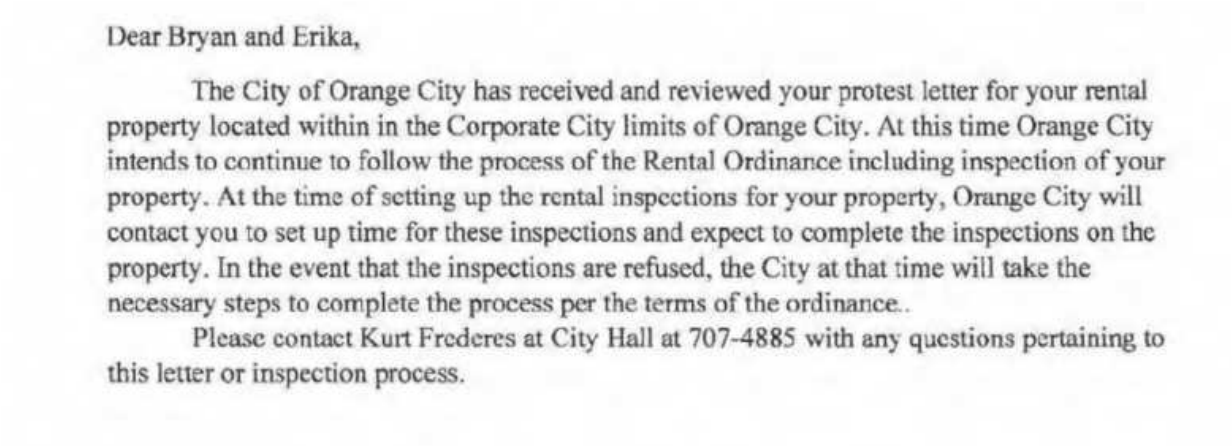
Sincerely,

Bryan Singer
Bryan Singer

Erika Singer
Erika Singer

CC: DP Homes, LLC, Owner of 527 Delaware Ave. SW

The City's response was by letter to the Plaintiffs on May 10, 2021, with the following content in each, but just a sample is provided here:



Dear Bryan and Erika,

The City of Orange City has received and reviewed your protest letter for your rental property located within in the Corporate City limits of Orange City. At this time Orange City intends to continue to follow the process of the Rental Ordinance including inspection of your property. At the time of setting up the rental inspections for your property, Orange City will contact you to set up time for these inspections and expect to complete the inspections on the property. In 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..

Please contact Kurt Frederes at City Hall at 707-4885 with any questions pertaining to this letter or inspection process.

Similarly, the landlord Plaintiffs Dykstra and Van Dam conveyed their tenants' refusal to the City in letters dated April 24 and 26, 2021, and concurring in the tenants' assertion of their privacy interests in the rental properties. It is clear that the City expressed an intent to follow through with the requirements of the ordinance and conduct the inspections as required and to seek an administrative warrant in the event of a refusal by the tenants to permit the inspection. The inspections were to be merely as a means of implementing the ordinance and did not arise from any City code violation, whether alleged or actual.

CONCLUSIONS OF LAW

Standing and Ripeness:

Judge Tott in his initial ruling on the Defendants' Motion to Dismiss on standing and ripeness grounds filed October 14, 2021, relied upon Greenbriar Group. LLC v. Haines, 854 N.W.2d 46,50 (Iowa App. 2104) and Iowa Coal Mining Co. v. Monroe County, 555 N.W.2d 418, 432 (Iowa 1996) in concluding that this action was ripe for the purposes

of conferring jurisdiction upon the Court to consider the merits of the Petition. The Court concurs with Judge Tott's conclusion and finds no reason on the record before it to overturn that determination. This matter is ripe for judicial determination of the controversy before it.

The renewal of the Motion to Dismiss for all the reasons stated therein as to standing and ripeness is denied.

Further, with regard to the issue of standing, the Plaintiffs (each of them) have an interest at stake here in this litigation. This interest is both personal and legal and is imminent by virtue of the language of the ordinance. The Plaintiffs have a privacy right at stake here with the implementation of the ordinance. This gives them standing. The rationale relied upon by Judge Tott in concluding that the Plaintiffs have standing is also adopted herein by this reference and this Court sees no reason or rationale to overturn or modify that determination.

Article 1 Section 8 of the Iowa Constitution:

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

Plaintiffs rely on the law that has developed with regard to criminal search warrants under Article 1, Section 8 of the Iowa Constitution in advancing their arguments in support of this action. Specifically, they rely in large part on State v. Wright, 961 N.W.2d 396 (Iowa

2021). Further, the Iowa Supreme Court has carved out its own independent right to interpret the Iowa Constitution which they guard jealously.

RULING

Plaintiffs' Petition requests that the Court declare unconstitutional the mandatory inspection requirement of Ordinance No. 825. Plaintiffs argue that the process for obtaining an administrative search warrant under the Ordinance fails to satisfy the requisite showing of probable cause required to conduct a nonconsensual rental unit inspection pursuant to Article I, Section 8 of the Iowa Constitution.[2] For this reason, Plaintiffs seek to enjoin Defendants from inspecting their rental units under the rental housing inspection program in the absence of a warrant supported by individualized probable cause.[3]

Defendants assert the inspection program is neutral, as it equally applies to all rental properties within the City of Orange City, and all properties require inspections at the same frequency and are subjected to the same terms. Additionally, Defendants assert the City has provided residents with an alternative to having the City inspector come into the properties by having the inspection done by a certified third-party inspection organization. Defendants provide examples of code violations that have been discovered in rental inspections within the City requiring remediation such as the addition of smoke detectors, carbon monoxide detectors, GFCI outlet/breakers, cover plates over breaker

[2] The Supreme Court of Iowa has held that Article I, Section 8 of the Iowa Constitution regarding the right of people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches applied in civil actions. *Atwood v. Vilsack,* 725 N.W.2d 641, 650 (Iowa 2006).
[3] To establish administrative probable cause required for issuance of an administrative inspection warrant, there must be some plausible basis for believing that a violation is likely to be found. *In re Inspection of Titan Tire,* 637 N.W.2d 115, 123 (Iowa 2001).

slots in breaker boxes, the discovery of dead batteries in smoke alarms, the addition of a handrail in a stairway, and the repairs of exhaust fans. (Def. App. 79-80, Defendants' Second Supplemental Answers to Plaintiffs' Interrogatories, #2).

The thrust of plaintiffs' argument in support of its motion for summary judgment is that the Ordinance authorizes and requires the City to obtain an administrative search warrant without any documented or undocumented evidence that a code violation exists, has existed, or will exist in or outside a targeted rental home. Further, Plaintiffs assert because administrative warrants are issued in ex parte proceedings, objecting tenants receive neither notice of, nor an opportunity, to contest the City's application for an administrative search warrant and will not know that the City has obtained an administrative search warrant until the City conducts the nonconsensual inspection. Additionally, Plaintiffs assert the Ordinance is unrestricted in scope and provides examples such as: (1) the City's searches are unrestricted in scope and include every room and closet in renters' homes; (2) the City can bring police into renters' homes during searches; (3) the City's inspector will inform the City Attorney about any evidence of criminal activity observed in renters' homes during searches.

The basic purpose of search and seizure clauses in the federal and state constitutions "is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials," and the traditional exceptions to the warrant requirement are "specifically established and well-delineated" to maintain safeguards when a warrant is impractical. *State v. King*, 867 N.W.2d 106, 123 (Iowa 2015) (*quoting Camara v. Mun. Ct. of City & Cnty. of San Francisco*, 387 U.S. 523, 528, 87 S. Ct. 1727,

1730, 18 L. Ed. 2d 930 (1967), *Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 514, 19 L. Ed. 2d 576 (1967)); *accord Ochoa*, 792 N.W.2d at 267.

Article I, Section 8 categorically states that "no warrant shall issue but on probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized." Iowa. Const. art. I, § 8. Critically, Article I, Section 8 contains an unambiguous prohibition (i.e., "no warrant shall issue") on the issuance of any warrant unless probable cause is present. Therefore, we must determine whether "probable cause" refers to our historical understanding of the concept or the loose standard articulated by the Court that does not require any individualized suspicion.

In *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523, 87 S. Ct. 1727, 18 L. Ed. 2d 930 (1967), the Supreme Court held that housing inspections should not be conducted without a warrant issued after a showing of reasonableness and a balancing by the decision-maker of "the need to search against the invasion which the search entails." *Id.* at 536–37, 87 S.Ct. at 1735. "[P]robable cause to issue a warrant to inspect" may be established by the existence of "reasonable legislative or administrative standards for conducting" inspections in a particular area, which standards "may be based upon the passage of time, the nature of the building ..., or the condition of the entire area." *Id.* at 538, 87 S.Ct. at 1736 (quotation omitted). But the required standards "will not necessarily depend upon specific knowledge of the condition of the particular dwelling." *Id.* The Court specifically rejected the complaining tenant's argument that "warrants should issue only when the inspector possesses probable cause to believe that a particular dwelling contains violations of the minimum standards prescribed by the code being enforced." *Id.* at 534, 87 S.Ct. at 1734.

In the case of *City of Golden Valley v. Wiebesick*, 899 N.W.2d 152 (Minn. 2017), the court considered "whether Article I, Section 10 of the Minnesota Constitution require[d] probable cause of the sort needed in a criminal investigation for a warrant to inspect a rental unit for housing code violations." *City of Golden Valley*, 899 N.W.2d at 156. The tenants and landlords residing in Golden Valley, informed the City of Golden Valley that they did not consent to the triennial inspection that was required for maintaining the landlords' rental license "on the ground that a search without a warrant based on individualized suspicion violate[d] the United States Constitution and the Minnesota Constitution." The City then filed a petition with the district court "for an administrative search warrant to inspect the property for compliance with the [City's] code . . . The district court denied the petition for the administrative search warrant, reading [Minnesota] precedent to 'foreclose issuance of a search warrant' without suspicion of a code violation.[4] The court of appeals reversed[]" and the tenants and landlords appealed. *City of Golden Valley*, 899 N.W.2d at 155-6.

The Supreme Court in Minnesota reasoned that the type of probable cause required in a criminal search was not required for a routine housing inspection. *Id*. at 165–66. The Court found that, under the City's ordinance, the intrusion is "relatively limited," with housing inspections made only after notice to landlord and tenant, and not aimed at discovering concealed personal effects, but rather focused on structural and mechanical items, doors and locks, windows, kitchen sanitation, appliances, ventilation, fire protection, and electrical, plumbing, and heating systems. *Id*. While the housing code

[4] The one significant difference between *City of Golden Valley* and the present facts is that Golden Valley had actually attempted to obtain an administrative search warrant.

violations could result in criminal penalties, the Court found the intrusion still not significant because the purpose of the housing code was to protect health and safety, which was "plainly administrative." *Id*. at 166. The Court found there to be a public interest in preventing dangerous conditions and protecting health and safety through housing inspections was of indispensable importance to the maintenance of community health. *Id*. at 167. To rely on an alternative policy of requiring individualized suspicion to achieve these goals would be 'impractical,' given that many conditions covered by housing codes are not observable from the outside of the building. *Id*.

Similarly, the case of *McCaughtry v. City of Red Wing*, 816 N.W.2d 636, 638 (Minn. Ct. App. 2012), *aff'd*, 831 N.W.2d 518 (Minn. 2013) held that warrant provisions of a municipal rental inspection ordinance, allowing for issuance of administrative search warrants to conduct inspections of rental property for code violations, were facially valid under state constitution's prohibition against unreasonable searches and seizures, even though the ordinance did not require individualized probable cause of code violation in a particular building, as a prerequisite to issuance of a warrant. *The ordinance required advance notice to property owners and tenants, limited inspections to ordinary business hours, imposed restrictions on scope of inspections, prohibited disclosure of information to law enforcement agencies unless an exception applied, and required a showing of reasonableness to obtain a warrant.*

In *City of Golden Valley v. Wiebesick*, the majority laid out appropriate procedures for the district court to follow when considering a petition for

an administrative search warrant. The Court set out the following guidelines for district courts to follow:

First, absent an emergency or other compelling need, a petition for an administrative search warrant should not be granted ex parte. In civil proceedings, our rules usually require that both sides receive reasonable notice and an opportunity to be heard. *See, e.g.*, Minn. R. Civ. P. 56.03 (requiring notice before a summary judgment motion may be heard); Minn. R. Civ. P. 65.02(a) (requiring notice before the issuance of a temporary injunction). But in limited circumstances, such as for temporary restraining orders, ex parte orders are allowed when necessary.[16] Similarly, absent compelling need, district courts should not issue administrative search warrants if the petitioner has not provided reasonable notice to tenants. *City of Golden Valley v. Wiebesick*, 899 N.W.2d 152, 168 (Minn. 2017).

Second, at a hearing on a petition for an administrative search warrant, the tenant must be given the opportunity to be heard and to advocate for reasonable restrictions to the warrant. We have long held that the opportunity to be heard "is absolutely essential." *State ex rel. Blaisdell v. Billings*, 55 Minn. 467, 57 N.W. 794, 795 (1894). *City of Golden Valley v. Wiebesick*, 899 N.W.2d 152, 168 (Minn. 2017).

Third, a district court considering a request for an administrative search warrant must take care to impose a "suitably restricted search warrant," *Camara*, 387 U.S. at 539, 87 S.Ct. 1727, regardless of whether the tenant attends or is represented at the hearing. Restrictions on the timing and scope of the inspection may be reasonable. If the applicant for the warrant has not disclosed it, the district court may also inquire into the extent of police presence, if any, planned for the inspection and the appropriateness of that

presence. Typically, absent a threat of danger, the police will not be participating in the inspection within the premises. Ultimately, the district court should use its sound discretion to determine the particular limitations on the administrative warrant based on the needs of the particular tenant and inspector. Taken together, these requirements will ensure a fair procedure when application is made for an administrative search warrant. *City of Golden Valley v. Wiebesick*, 899 N.W.2d 152, 168 (Minn. 2017).

Iowa Code section 808.14 provides the statutory basis for administrative search warrants:

> The courts and other appropriate agencies of the judicial branch of the government of this state may issue administrative search warrants, in accordance with the statutory and common law requirements for the issuance of such warrants, to all governmental agencies or bodies expressly or impliedly provided with statutory or constitutional home rule authority for inspections to the extent necessary for the agency or body to carry out such authority, to be executed or otherwise carried out by an officer or employee of the agency or body.

Obviously, neither this statute, nor the Fourth Amendment, grant carte blanche authority to courts to issue administrative search warrants. *State v. Carter*, 733 N.W.2d 333, 340 (Iowa 2007). Section 808.14 requires that administrative search warrants be issued "in accordance with the statutory and common law requirements for the issuance of such warrants." *Id*. The Fourth Amendment requires that "reasonable legislative or administrative standards for conducting an inspection are satisfied" before an administrative search may be conducted. *O'Connor,* 480 U.S. at 723, 107 S.Ct. at 1500, 94 L.Ed.2d at 726.

Plaintiffs contend the Ordinance permits the City to search Plaintiffs' homes and properties without consent and without individualized probable cause, the City's inspections are intrusive and invade the privacy of renters' homes, and the City intends to search Plaintiffs' home and properties, despite their objections and without evidence of code violations, pursuant to administrative search warrants.

Defendants counter that the requirements of an administrative warrant do not require evidence of a specific violation and any administrative search warrants that the City might seek in the future under the ordinance would be based on the reasonable legislative or administrative standards, making specific evidence of an existing violation unnecessary.

The Court finds here that there needs to be more safeguards or protective measures put in place as there are currently none in place in Iowa for the district court to use when considering a request or an application for an administrative search warrant. This Court looks to those protective measures set out by the Minnesota Supreme Court in Golden Valley. Under the present system, once the administrative warrant is issued, the occupant receives no notice, has no way of knowing the scope of the inspection of his or her premises, and no way of knowing the lawful limits of the inspector's power to search and no means to challenge the scope or limits until after the search has been completed. Tenants have a "very tangible interest in limiting the circumstances under which the sanctity of [their] home may be broken by official authority" and so have a "constitutional right to insist that the inspectors obtain a warrant to search." *Camara*, 387 U.S. at 531, 540, 87 S.Ct. 1727. This Court believes that the insistence on obtaining a warrant to search requires the concomitant requirement that the warrant application

process contain certain basic protections for the party who will be subject to the search upon the issuance of a search warrant. While it is not this Court's duty here to set forth what is required in order for the Ordinance to pass constitutional review, this Court finds great value in those safeguards set forth by the Minnesota Supreme Court in the City of Golden Valley case beginning at page 168 to-wit:

- Absent an emergency or other compelling need, a petition for an administrative search warrant should not be granted ex parte;
- At a hearing on a petition for an administrative search warrant, the tenant must be given the opportunity to be heard and to advocate for reasonable restrictions to the warrant;
- A Court considering a request for an administrative search warrant must take care to impose a "suitably restricted search warrant," regardless of whether a tenant attends or is represented at the hearing;
- Restrictions on the timing and scope should be reasonable;
- The presence or absence of law enforcement should be disclosed or an inquiry made as to the matter either with the request for a warrant or at the hearing; and
- The Court should use its discretion to determine the particular limitations on the administrative warrant based on the needs of the particular tenant and inspector.

Taken together, these requirements will ensure a fair procedure when application is made for an administrative search warrant.

The Ordinance fails therefore because there needs to be more than just a purpose stated for the administrative warrant and none of the above safeguards are required to be utilized in the Ordinance for the administrative search warrant process.

The Court finds without the safeguards noted above or similar ones, the administrative warrant violates Plaintiffs' rights under Art. I, § 8. For these reasons, the Court declares unconstitutional the mandatory inspection requirement of Ordinance No. 825. The Court permanently enjoins Defendants from seeking an administrative warrant to conduct inspections authorized under the current language set forth in the City's Ordinance.

Finally, the Court awards the Plaintiffs nominal damages of $1.00 for having to bring this action and raise the constitutional challenge. There is an injury here in the form of a constitutional violation, but no compensable loss

Nominal Damages

A dollar constitutes nominal damages. *Cowan v. Flannery*, 461 N.W.2d 155, 158 (Iowa 1990). We have stated: Generally, nominal damages are not recoverable in cases in which damages are an element of the cause of action. Because damages are an element of a negligence or comparative fault action, nominal damages should not be awarded. If a party has suffered personal injury as a result of another's negligence or fault, the injured party is entitled to actual or substantial damages, not nominal damages. Nominal damages are allowed, not as an equivalent for the wrong, but in recognition of a technical injury and by way of declaring a right and are not the same as damages small in amount. *Id.* at 158–59 (citations omitted).

The Court awards Plaintiffs nominal damages of $1.00 for the necessity of defending themselves against Orange City Ordinance No. 825.

ORDER

For the reasons stated in this Ruling, **IT IS ORDERED**:

1) Defendants' Motion for Summary Judgment is **DENIED**.

2) Plaintiffs' Motion for Summary Judgment is **GRANTED**.

3) Plaintiffs each are awarded nominal damages of $1.00.

4) Cost of this matter are taxed to the Defendant City of Orange City.

SO ORDERED. Clerk to notify.

State of Iowa Courts

Case Number	**Case Title**
EQCV029175	VAN DAM, ET AL V. CITY OF ORANGE CITY, ET AL.
Type:	OTHER DECREE

So Ordered

Jeffrey A. Neary, District Court Judge,
Third Judicial District of Iowa

Electronically signed on 2023-08-31 11:50:15