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**ATTORNEYS FOR DEFENDANTS
BOROUGH OF POTTSTOWN
AND KEITH A. PLACE**

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

DEFENDANTS, BOROUGH OF POTTSTOWN AND KEITH A. PLACE’S BRIEF IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

Defendants, the Borough of Pottstown (“Pottstown”) and Keith A. Place (collectively the “Pottstown Defendants”), pursuant to Pennsylvania Rule of Civil Procedure 1035.2 and Montgomery County Rule of Civil Procedure 1035.2(a), by and through their undersigned counsel, Siana Law, LLP, submit this Brief in Support of Their Motion for Summary Judgment as follows:

I. MATTER BEFORE THE COURT

The Pottstown Defendants request this Court grant summary judgment determining that administrative warrants to inspect rental housing for public health and safety reasons is entitled to reduced Article 1, Section 8 protections.

The Pottstown Defendants assert that the Pennsylvania Supreme Court has already determined that “administrative searches” inclusive of ‘dragnet searches’ (e.g., rental inspections) and those with a reduced expectation of privacy, are “entitled to *reduced* Fourth Amendment **and Article I, Section 8 protections.**” *In the Interest of Y.W.-B, a minor*, 265 A.3d 602 (Pa. 2021),

emphasis added¹. Therefore, Plaintiffs’ attack on Pottstown’s rental ordinance; and specifically the issuance of an administrative warrant based on less than individualized probable cause fails, as a matter of law.

II. PROCEDURAL HISTORY

Dorothy Rivera, Eddy Omar Rivera, Steven Camburn, the Estate of Thomas Oconnor², Kathleen O’Connor, and Rosemarie O’Connor commenced this Declaratory Judgment action seeking a determination that the Borough’s rental-inspection ordinance is unconstitutional pursuant to Article I, Section 8 of the Pennsylvania Constitution (Doc. No. 0, 19(as amended)). (A copy of the Amended Complaint is attached hereto for the Court’s convenience, marked Exhibit “A”). The Pottstown Defendants filed an Answer with New Matter denying Plaintiffs’ entitlement to relief. (Doc. 32). (Attached hereto for the Court’s convenience marked Exhibit “B”). Discovery has concluded and the Pottstown Defendants move for Summary Judgment.

III. STATEMENT OF FACTS

A. The Rental Inspection Ordinances

1. Rental Inspection Ordinances

The Borough is a municipal entity subject to the Pennsylvania Borough Code. 8 Pa.C.S.A. § 101, *et. seq.* Pursuant to Pottstown’s Code, Pottstown has the power to enact and amend ordinances consistent with Pennsylvania law. 8 Pa.C.S.A. § 1006. In June 2015, Pottstown’s promulgated and adopted the Code of Ordinances, Chapter 5, *Code Enforcement* and Chapter 11, *Housing, June 8, 2018* (collectively referred to herein as the “Inspection Ordinances”) (Attached hereto as Exhibit “C”). As amended by Ordinance 2137 on June 8, 2015 the Ordinances require residential rental licenses

¹ As will be discussed, *infra.*, the Y.W-B. Court, while denying the reduced constitutional protections for home inspections related to child services/neglect, the Supreme Court undertook a thorough analysis of rental inspection ordinances to differentiate the necessary standards for administrative searches.

² Mr. O’Connor passed away late 2022 and the Estate was substituted on April 6, 2023.

along with biennial residential rental inspections (See Meeting Minutes and Ordinance 2137 attached hereto as Exhibit “D”).

2. Purpose and Findings for Enactment

As set forth in the Registration and Licensing of Residential Rental Units:

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

§201(1) *Purpose.* In consideration of the adoption of the Inspection Ordinance, Pottstown made the following findings:

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

§201 (2) *Purpose.*

3. Inspections

Each residential unit shall be inspected biennially, upon a property transfer; upon a complaint that a violation has occurred; or where there is reasonable cause to believe a violation is occurring.

(Chapter 5, Part 8, § 801; Ex. C).

As it relates to the power to inspect,

The owner shall permit inspections of the premises by the Licensing and Inspections Officer at reasonable times upon reasonable notice. If the owner does not permit such inspection of the premises by the

Licensing and Inspections Officer, the Licensing and Inspections Officer may apply for an administrative warrant to inspect the premises.

(Chapter 11 § 203(I)(3); Ex. C) (as amended by Ord. 2137 (6/8/2015). Additionally,

The occupant(s) shall comply with all obligations imposed by this Part and all applicable codes and ordinances of the Borough of Pottstown, as well as all state laws and regulations.

(Chapter 11 §203(J)(2)(A); §203(J)(1); Ex. C).

The Inspection Ordinances likewise provides for the procedures for licensing and registration, including:

The Licensing and Inspections Department shall schedule inspections of residential rental units with a minimum of 10 days advance notice. Nothing in this section shall be deemed to limit or restrict the ability of the Borough to conduct inspections of any residential rental unit as deemed necessary to enforce any part of the Code of the Borough of Pottstown or the laws of the Commonwealth. The applicant is responsible for scheduling of the inspection and payment of all costs of the inspection (hereinafter referred to as the “inspection fee”) as fixed from time to time by resolution of the borough council.

(Chapter 11 §205(2); *Procedure for Applying for Residential Rental License*, Ex. C; (Ord. 2137, 6/8/2015)). If a code violation is found, the owner is to “promptly take action, or cause the necessary action to be taken, to abate the offending condition and eliminate the violation.” (Chapter 11 §203(1)(I)(1); Ex. C).

Rental property owners are subject to the Ordinances and are provided a Rental Packet, which consists of several forms: a Rental Registration Application, Rental License Application, Rental Inspection Application, Tenant List, and the Residential Rental & Property Transfer Checklist (hereinafter “Rental Packet” attached hereto as Exhibit “E”).

The Rental Checklist is used as a guideline during the inspection (See, Rental Checklist attached hereto as Exhibit “F”). In addition to the Rental Checklist, the inspectors are guided by Rental

Inspection Standard Operating Procedures (“SOP”) (See, SOP attached hereto as Exhibit “G”). The SOPs and the Rental Checklist ensure all Inspectors operate in a consistent and transparent manner ((N.T. Keith Place (Corporate Designee), 10/23/18, pg. 96, ln. 24 – pg. 97, ln. 1-3) attached hereto at Exhibit “H”).

B. Pottstown Rental Inspectors

Pottstown currently employs five (5) inspectors (N.T. Keith Place (Individual Capacity), 4/21/23, pg. 4, ln. 11-24) attached hereto at Exhibit “I”). Inspectors must undergo continuing education credits and maintain both state and national certifications (N.T. Keith Place (Corporate Designee), 2/27/19, pg. 252, ln. 12-18) attached hereto at Exhibit “J”). Specifically, Inspectors are trained in policy education, code changes promulgated throughout the state, UCC requirements, and ICC requirements ((N.T. Keith Place (Individual Capacity), 10/23/18, pg. 25, ln. 14-22) attached hereto at Exhibit “K”). Pottstown requires: a Property Maintenance Inspector certification; a Residential Building Inspector certification issued by the Department of Labor and Industry; and a Commercial Building Inspector certification issued by the Department of Labor and Industry (See, Job Description attached hereto as Exhibit “L”). The Inspectors’ training is continually ongoing, and prior to being able to conduct inspections independently, all new inspectors shadow a senior inspector for three (3) months (Place (Individual Capacity) Dep., Ex. K at pg. 26, ln. 18-24; pg. 30).

C. Pottstown Rental Inspections

The Inspectors use the same Rental Inspection Report (the “Report”) during the inspection (See, Report attached hereto and marked as Exhibit “M”). The Checklist contains an itemized list, separated by room, to include a pass or fail designation. *Id.* The tenants may attend the inspection ((N.T. Alex Gonzalez, 4/20/23, pg. 13, ln. 23-24 – pg. 14, ln. 1) attached hereto as Exhibit “N”). Inspections do not occur if there is only a minor child present ((N.T. Keith Place (Corporate

Designee), 4/21/23, pg. 46, ln. 14-24 - pg. 47, ln. 1-6; pg. 47 ln. 14-24 - pg. 48, ln. 1) attached hereto at Exhibit “O”); see also (N.T. Charles Weller, 4/20/23, pg. 27, n. 22-24 – pg. 28, ln. 1-3) attached hereto as Exhibit “P”); and ((N.T. Stephanie Drobins, 4/20/23, pg. 33, ln. 9-22) attached hereto as Exhibit “Q”).

Inspectors do not look under beds or move items (Place (Corporate Designee) Dep., Ex. H at pg. 91, ln. 1-4). Inspectors check all electrical outlets, if furniture or another item is blocking an outlet, the Inspector notes on the Report that he/she was unable to access the outlet (Place (Corporate Designee) Dep., Ex. H at pg. 92, ln. 2-14). The only item the Inspectors move is if a unit has a gas stove, he/she will slide the stove out to ensure there is a shut-off valve, as this is a safety concern. (Place (Corporate Designee) Dep., Ex. J at pg. 259, pg. 7-24, 260, ln. 1-10). Generally, Inspectors do not open closet doors (Place (Corporate Designee) Dep. Ex. H at pg. 111). If there is a light in a closet (which requires permanent covers for safety reasons), the Inspector will open the closet only to ensure there is a permanent cover. (Place (Corporate Designee) Dep., Ex. H at pg. 124-125).

The Inspectors only contact the police if they fear for their safety during an inspection. (Weller Dep., Ex. P at pg. 35, ln. 23-24 – pg. 36, ln. 1-4); (Drobins Dep., Ex. Q at pg. 81, ln. 6-13). The rental inspection program does not have a law enforcement policy as making arrests is not the intended purpose of the program (Place (Individual Capacity) Dep., Ex. K at pg. 43, ln. 9-11).

If there are any issues found during the inspections, an inspection report is provided to the landlord and 30 days are given to correct any deficiencies (Ex. C; Chapter 11, § 203(1)(H)(1-2)). If a landlord requires more than 30 days to correct any issues, a written request may be submitted. *Id.*

The inspection fee covers the initial inspection and one re-inspection. *Id.* After a unit has passed inspection and the names of the current tenants are provided, a rental license is issued. *Id.*

D. Issuance of Rental Inspection Warrants

An inspector will complete an affidavit of probable cause and obtain the warrant from the local Magisterial Judge (See, Ex. R, containing examples of packets of Affidavits of Probable Cause and Administrative Warrants as issued).

E. Pottstown Rental Units.

There are over 4,000 rental units within Pottstown. (Place (Corporate Designee) Dep., Ex. H at pg. 51). Pottstown’s map was split into eight (8) rental zones for purposes of conducting the inspections (Place (Corporate Designee) Dep., Ex. K at pg. 21; See also Rental Zone Chart attached hereto as Exhibit “S”).

F. Named Plaintiffs

i. Steve Camburn

Mr. Camburn owns and operates approximately 28 rental properties in Pottstown ((N.T. Steven Camburn, 4/4/23, pg. 7, ln. 21-24; pg. 10, ln 5-16) attached hereto at Exhibit “T”). Since the enactment of the Inspection Ordinances, Mr. Camburn and/or his tenants have requested Pottstown obtain an administrative warrant before conducting the rental inspections (See, Samples of Administrative Warrants, Ex. R).

Mr. Camburn does not oppose inspections once an administrative warrant has been issued. (Camburn Dep., Ex. T at pg. 93-94; pg. 109, ln 23-25; pg. 110, ln. 1). In fact, he works with Pottstown to schedule an agreeable date and time for the biennial inspection to occur. *Id.* Also see, Exhibit “U”.

Additionally, several units owned by Camburn have tenants who receive Housing Choice Vouchers from the Montgomery County Housing Authority (Camburn Dep., Ex. T at pg. 13, ln. 12-17). Similar to Pottstown, the Housing Authority requires bi-annual rental inspections to ensure safety (Camburn Dep., Ex. T at pg. 16, ln. 4-12; pg. 17, ln. 9-15; pg. 18, ln. 1-6). The Housing Authority provides notice of and a final report (See, sample notifications from the Montgomery County Housing Authority marked Exhibit “V”). The inspections conducted on behalf of the Housing Authority include that the “inspector will need access to all rooms and areas of the unit, checking for any damages or required repairs. In addition, the inspector will determine whether smoke alarms and fire detection devices are properly mounted and in working order. Please make sure that the refrigerator and stove are clean and in working order, as these areas will also be inspected.” See, e.g., Plaintiffs00004889, Ex. U). Mr. Camburn nor his tenants object to the Housing Authority’s rental inspection as the tenants could lose their Housing Choice Vouchers (Camburn Dep., Ex. T at pg. 13-18).

Camburn’s tenants are subject to leases, and he uses the same lease for all tenants in Pottstown. (Camburn Dep. Ex. S at pg. 63, ln. 1-16). The same lease as issued in Rivera is utilized for his tenants. *Id.* (See Rivera lease attached hereto and marked Exhibit “W”). As set forth in the Lease:

19. Right of Inspection. Lessor and his agents shall have the right at all reasonable times during the term of this lease and any renewal thereof to enter the demised premises for the purpose of inspecting the premises and all building and improvements thereon.

(Lease, Ex. W, ¶19). The Lease reserves the right for the landlord to inspect the property (Camburn Dep., Ex. T at pg. 46, ln. 12- 25 – pg. 47, ln. 1-2) The Lease fails to provide any notice prior to the landlord’s entry (See, Lease, Ex. W).

Additionally, the Lease provides that the “Lessee shall comply with all sanitary laws, ordinances, rules and orders of appropriate governmental authorities affecting the cleanliness, occupancy, and preservation of the demised premises, and the sidewalks connected thereto during the term of this lease.” (Lease, Ex. W, ¶7).

ii. Dorothy Rivera and Eddy Omar Rivera

The Riveras reside in a rental property owned by Mr. Camburn, at 326 Jefferson Avenue. (ACOM, ¶ 4-5). The 326 Jefferson property is subject to Pottstown’s rental inspection Ordinances. The Riveras executed a Lease with Camburn agreeing to comply with local ordinances (See, Lease, Ex. W. ¶7).

As named Plaintiffs, the Rivera premises has not been inspected during the course of this litigation.

ii. Thomas, Kathleen, and Rosemarie O’Connor

Thomas O’Connor owned properties located at 462 and 466 Franklin Street (ACOM, ¶ 31; ((N.T. Kathleen O’Connor, 4/3/23, pg. 19) attached hereto at Exhibit “X”) Kathleen and Rosemarie O’Connor (daughters of Mr. O’Connor) resided in 466 N Franklin Street but maintained the unit was not a rental property as it was owned by their father; there was no lease; and they did not pay rent (K. O’Connor Dep., Ex. X at, pg. 75, ln. 1-6). Thomas O’Connor passed away in late 2022 and his Estate has been substituted (See, Doc. No. 194).

Kathleen O’Connor was appointed Executrix of her father’s estate (K. O’Connor Dep., Ex. W at pg. 20, ln. 1-2). The properties owned by Thomas O’Connor at 462 and 466 N Franklin Street were transferred to Kathleen and Rosemarie O’Connor on March 15, 2023 (See Deeds, attached hereto as Exhibit “Y”); ((N.T. Rosemarie O’Connor, 4/3/23, pg. 15-21) attached hereto at Exhibit “Z”). Kathleen and Rosemarie O’Connor moved from the rental property located at 466

Franklin Street to 462 Franklin Street. They have no intention of renting the property located at 466 N Franklin (Ex. Z at pg. 7, ln. 17-20).

IV. STATEMENT OF QUESTIONS INVOLVED

A. Whether the Pottstown Defendants are entitled to Summary Judgment as to the claims asserted by the O’Connors?

Suggested Answer: *Yes*.

B. Whether Pottstown’s Rental Inspections are subject to reduced Article I, Section 8 protections?

Suggested Answer: *Yes*.

C. Whether Defendant Place, Sued Only in his Official Capacity, is Entitled to Summary Judgment?

Suggested Answer: *Yes*.

D. Whether Plaintiffs’ Claim for Monetary Damages Fails?

Suggested Answer: *Yes*.

V. LEGAL STANDARD

A party may move for summary judgement after the relevant pleadings are closed, in whole or in part as a matter of law:

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

(2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

Pa.R.C.P. 1035.2.

“[T]he mission of the summary judgment procedure is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for a trial.” *Ertel v. Patriot-News Co.*,

674 A.2d 1038, 1042 (Pa. 1996); *Garzella v. Borough of Dunmore*, 62 A.3d 486, 497 (Pa. Cmwlth. 2013). In ruling upon a motion for summary judgment, the trial court must examine the record in the light most favorable to the non-moving party, accept as true all well-pleaded facts in his or her pleadings, and give him or her the benefit of all reasonable inferences to be drawn therefrom. *Dansak v. Cameron Coca-Cola Bottling Co., Inc.*, 703 A.2d 489 (Pa. Super. 1997); *Ack v. Carroll Twp.*, 661 A.2d 514 (Pa. Cmwlth. 1995). A non-moving party may not merely rest on their allegations to defeat summary judgment. Rather, to defeat summary judgment, sufficient evidence must be presented on an issue essential to their case and on which they bears the burden of proof such that a jury could return a verdict in her favor. *Ertel*, 544 Pa. at 101-02, 674 A.2d at 1042. Otherwise, summary judgment should be entered in favor of the moving party.

VI. LEGAL ARGUMENT

A. The O'Connor Plaintiffs are Not Subject to Pottstown's Rental Ordinances.

Thomas O'Connor, the owner of both 462 and 466 N. Franklin Street at the time this lawsuit commenced, passed away in late 2022. Following his death, Plaintiff Kathleen O'Connor was appointed his Executrix, and the Estate was substituted (Doc. No. 194). Thereafter, both properties were transferred to Kathleen and Rosemarie O'Connor (K. O'Connor Dep., Ex. X at pg. 23, ln. 14-23; Deeds, Ex. Y). Some of the O'Connor sisters' personal items remain in 466 N Franklin Street, but they sleep at 462 N Franklin Street (K. O'Connor Dep., Ex. X at pg. 38, ln. 2). They have no current intention to rent 466 N Franklin Street (R. O'Connor Dep., Ex. Z at pg. 7, ln. 17-20).

As 466 N. Franklin Street, previously subject of the rental property ordinance has been transferred to a new owner; and is not being used as a rental property, neither the property nor the O'Connor's are subject to Pottstown's Rental Ordinances. Therefore, they have no standing to

seek relief as they are not subject to Pottstown’s rental inspection program. Accordingly, the Pottstown Defendants are entitled to summary judgment as to the claims asserted by the O’Connor Plaintiffs, as a matter of law.

B. As a Matter of Law, Pottstown’s Administrative Warrant’s and Related Inspections are Entitled to Reduced Article 1, Section 8 Protection.

1. Pennsylvania Courts Have Not Expanded Greater Privacy Rights in the Rental-Housing Inspection Context.

Plaintiffs’ bald assertions that “Article 1, Section 8 requires a higher standard of care for issuing a warrant to search a home than does the Fourth Amendment as interpreted in *Camara v. Municipal Court*, 387 U.S. 523 (1967)”³ lacks merit where in fact the Pennsylvania Supreme Court has recently held that rental inspection “administrative searches” are “entitled to reduced Fourth Amendment and Article 1, Section 8 protections.” *Interest of Y.W.B.* at p. 624.

When asked to determine the type of probable cause required for protective services’ home inspections, the Pennsylvania Supreme Court, determining in a matter of first impression the *Camara* type administrative warrant did not apply, nonetheless provided analysis of administrative warrants, including rental inspections. In doing so, it re-affirmed, as prior Pennsylvania Courts have referenced, that for administrative warrants for rental inspections based upon rental ordinance, a higher standard than that interpreted in *Camara* is not required. The Court’s analysis is both precedential and instructive to the issues in this declaratory judgment matter.

In its review of *Camara*, the Pennsylvania Supreme Court, *Interest of Y.B.-B.* noted:

- In *Camara*, the Supreme Court addressed a circumstance where a San Francisco tenant challenged a city code provision that allowed health and safety inspectors to conduct warrantless searches of apartments to check for possible code violations. The Court began by emphasizing that an administrative inspection for possible violations of a city’s housing code was a “significant intrusion upon the interests protected by the Fourth Amendment[.]” *Camara*, 387 U.S. at 534, 87 S.Ct. 1727. **The Court then rejected any contention that the Fourth Amendment only**

³ Am. Cmplt. Ex. A at ¶76.

protects citizens from searches to obtain evidence of a crime, but does not apply to civil administrative searches. (Interest of Y.W.-B. at 620, emphasis added)

- The Court also recognized that an administrative inspection for possible violations of a city’s housing code posed a unique situation, since unlike searches of a specific residence for a particular purpose (i.e., to find evidence of a crime), **the investigation programs at issue were “aimed at securing city-wide compliance with minimum physical standards for private property[,]” and that even a single unintentional violation could result in serious hazards to public health and safety, e.g., a fire or an epidemic that could ravage a large urban area.** *Camara*, 387 U.S. at 535, 87 S.Ct. 1727. Accordingly, given this distinctive circumstance, the Court concluded that probable cause to issue a warrant to inspect exists “if reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling.” *Id.* at 538, 87 S.Ct. 1727 (Interest of Y.W.-B. at 621, emphasis added).
- Unlike in *Camara*, which involved an agency’s decision to conduct an area inspection based upon its appraisal of the conditions in the **area as a whole** to protect the public, probable cause to conduct a home visit depends upon whether probable cause exists to justify the entry into a **particular** home based upon credible evidence that child neglect may be occurring in that particular home. Moreover, and importantly, the scope of the search in the present case was in no respect limited to ensuring compliance with certain identified housing code violations. (Interest of Y.W.-B. at 621).

Pennsylvania’s Supreme Court didn’t end its analysis there, it then conducted a review of administrative searches referred to as ‘dragnet’ searches; and those with a reduced expectation of privacy. In referring to *Camara* searches as ‘dragnet’ searches, it noted:

Decided in 1967, *Camara* was the Supreme Court’s first blessing of what has come to be known as a “dragnet search,” namely one in which the government searches every person, place, or thing in a specific location or involved in a specific activity. *See generally* Eve Brensike Primus, *Disentangling Administrative Searches*, 111 Colum. L. Rev. 254, 263 (2011). Dragnet searches are not predicated on individualized showings of probable cause, nor indeed on **any** kind of individualized suspicion. *See City of Golden Valley v. Wiebesick*, 899 N.W.2d 152, 161 (Minn. 2017) (“Administrative search warrants must be supported by probable cause; not individualized suspicion but ‘reasonable legislative or administrative standards for conducting an area inspection.’”) (quoting *Camara*, 387 U.S. at 538, 87 S.Ct. 1727); Christopher Slobogin, *The Liberal Assault on the Fourth Amendment*, 4 Ohio St. J. Crim. L. 603, 611 (2007) (noting the

individualized suspicion requirement cannot be honored when large groups of people are subjected to searches or seizures). On the contrary, the hallmark of a dragnet search is its generality, as it reaches everyone in a category rather than only a chosen few. In addition to the safety-related inspection of every home in a given area in *Camara*, other dragnets include checkpoints where government officials stop, for example, every car or every third car driving on a particular roadway, *see also United States v. Martinez-Fuerte*, 428 U.S. 543, 550, 96 S.Ct. 3074, 49 L.Ed.2d 1116 (1976) (upholding checkpoint stops for illegal aliens near the border); and drug testing programs that require every person involved in a given activity to submit to urinalysis. *See, e.g., Bd. of Educ. v. Earls*, 536 U.S. 822, 837, 122 S.Ct. 2559, 153 L.Ed.2d 735 (2002) (permitting random drug testing of students involved in extracurricular activities).

(Interest of Y.W.-B. at 622-623). The Court continued:

Dragnet searches are justified if they satisfy a balance of interests and are necessary because a regime of individualized suspicion could not effectively serve the government's interest. In *Camara*, the Court suggested that if the legislative standards were reasonable, probable cause existed because "the only effective way to seek universal compliance with the minimum standards required by municipal codes is through routine periodic inspections of all structures." *Camara*, 387 U.S. at 535-36, 538, 87 S.Ct. 1727. Based on this rationale, there could not reasonably be an individual suspicion because the inspections are **routine and periodic**.

(*Interest of Y.W.-B.* at 623). Instructive in the Court's analysis is the differentiation of 'dragnet' type searches individual type searches. The Dragnet searches are not focused on 'individuals' but reaches everyone in a category – their "hallmark". As such, individualized probable cause is not reasonable. Here, the inspections apply to all rental properties in Pottstown; and if there is no consent, Pottstown may seek an administrative warrant to complete the routine and periodic safety inspections. As Plaintiffs admit that the Pottstown's inspections are conducted as interpreted in *Camara*. (Am. Compl. at ¶77); and, as the Pennsylvania Supreme Court has provided an approving analysis of such warrants based upon a reduced Article 1, Section 8 protection, Plaintiff's declaratory judgement claim fails as a matter of law.

More specifically, Pottstown’s rental inspections for the health, welfare and safety of its residents could not reasonably be based upon individualized suspicion as they are routine and periodic as to all rental properties. In this regard, when comparing the administrative searches with those for individualized searches, Pennsylvania’s Supreme Court held:

As a result, while home visits in the child neglect context are conducted by civil government officials rather than members of law enforcement, **they do not fit within the two categories of “administrative searches” entitled to reduced Fourth Amendment and Article 1, Section 8 protections.**

Interest of Y.W.-B at 624 (emphasis added). As the Pennsylvania Supreme Court has already determined that rental inspections are entitled to a reduced – not heightened – Article 1, Section 8 protections, Plaintiffs’ declaratory judgment claim seeking to institute greater Article 1, Section 8 protection fails as a matter of law.

And, despite that *Interest of Y.W.-B.* was decided recently, in 2021, Pennsylvania appellate courts have not in the past 50 years since the United State Supreme Court’s determination in *Camara* created a heightened Pennsylvania Constitutional Protection for rental inspections. In fact, the opposite is true.

For example, In 1999, the Commonwealth Court addressed a landlord’s claim that a rental inspection ordinance, adopting the BOCA code requiring registration, biennial inspections and fees violated his right to freedom from unreasonable searches and seizures under the Fourth Amendment to the United States Constitution **and Article One, Section Eight of the Pennsylvania Constitution**, among other items. *Simpson v. City of New Castle*, 740 A.2d 287 (Pa. Cmwlth. 1999). The subject ordinance provided:

The code official is authorized to enter the structure or premises at reasonable times to inspect subject to constitutional restrictions on unreasonable searches and seizures. If entry is refused or not obtained, the code official is authorized to *pursue recourse as provided by law.*

(Emphasis added) *Id.* at 291. The Court determined that consistent with the Fourth Amendment **and Article 1, Section 8 of the Pennsylvania Constitution**, the city would be permitted to obtain an administrative warrant that falls within the exception for the need of criminal-type warrant requirements.

Because Section PM-105.3 imposes on code officials the requirement to inspect subject to constitutional restrictions, it is adequate protection against unreasonable searches and seizures as protected by the Fourth Amendment to the United States Constitution and Article One, Section Eight of the Pennsylvania Constitution. As such, Landlord's claim is without merit.

Simpson at 291.

In 2003, the Commonwealth Court determined that not only was a city's rental inspection ordinance facially constitutional but that the city did not bear a burden more onerous than the one placed on municipal inspectors in *Camara. Com. v. Tobin*, 828 A.2d 415 (Pa. Cmwlth. 2003). While this was a criminal matter when an individual was convicted for violating the ordinance, which conviction was overturned, the Court likewise conducted an analysis of *Camara*, it adopted the *Camara* type of probable cause. In doing so, it also noted their decision was in accord with *Simpson*. More specifically:

Relying on the long history of judicial and public acceptance of inspection programs, the public interest in preventing and abating dangerous conditions, and the impersonal nature of the search, which does not seek to "discover a crime," it held, as we noted earlier in this opinion, that probable cause to issue an administrative search warrant exists if "reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling." *Id.* at 538, 87 S.Ct. 1727. We, too, must determine "probable cause" within this context.

Tobin at 423.

The Court reinforced *Camara* by stating that probable cause, for an administrative warrant, exists if “reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling.” *Id.* at 420 citing *Camara*, 387 U.S. at 538. Accordingly, as indicated above, Pennsylvania case law relating to rental inspections have not only failed to determine that greater protections under Article 1, Section 8 are required, but have also cited *Camara* with approval.

Also, see *Greenacres Apartments, Inc. v. Bristol Tp.*, 482 A.2d 1356 (Pa. Cmwlth. 1984). Where a rental inspection program was aimed to “protect the public health, safety, and welfare by ensuring that rental units comply with the minimum housing standards set forth in the ordinance.” *Id.* at 576. The ordinance likewise provided that the township may “apply to a Justice of the Peace for a warrant to inspect any such units if he has reason to believe, based upon a complaint, that a violation exists therein...” or where an “... inspection is sought due to the lapse of time since the last inspection.” *Id.* at 576-577. The Court, citing *Camara*, rejected the plaintiff’s argument that obtaining an administrative warrant violated the plaintiff’s right against unreasonable searches and seizures. *Id.* at 577, fn. 4.

Plaintiffs have not and cannot direct this court to any Pennsylvania case involving administrative type – *dragnet* searches requiring greater privacy protection. It is anticipated Plaintiffs will direct this Court to prior Pennsylvania interpretations which required greater privacy protection pursuant to Article 1, Section 8 of the Pennsylvania Constitution. However, all of those cases dealt with individualized probable cause; and not generalized claims involving dragnet searches which reach “everyone in a category rather than only a chosen few.” (*Interest of Y.W.B.*) Individualized probable cause in criminal matters have no relevance to Pottstown’s rental

ordinance which require routine and periodic inspections of all rental properties – for which individualized suspicion cannot serve the government’s interest. ⁴

2. The Edmunds Factors Do Not Require Greater Protections of Article 1, Section 8.

Although the Pottstown Defendants assert that Pennsylvania Supreme Court’s analysis and holding in the *Interest of Y.W.-B.* forecloses Plaintiff’s argument that Article 1, Section 8 requires greater protections, and that no further analysis is required, out of an abundance of caution, Pottstown will address the *Edmunds* factors. It becomes even more clear that Pennsylvania has not, nor will it, create heightened privacy protection for rental inspections as it relates to Article 1, Section 8 of the Pennsylvania Constitution.

Courts are to construe the Pennsylvania Constitution as providing greater rights to its citizens than the federal constitution only where there is a compelling reason to do so. *Commonwealth v. Moore*, 928 A.2d 1092, 1101 (Pa. Super. 2007). Here, there is no compelling reason. When reviewing whether the Pennsylvania Constitution confers more rights than its federal counterpart, courts must examine (1) the text of the Pennsylvania constitutional provision; (2) the history of the provision, including Pennsylvania case law; (3) related case law from other states; and (4) policy considerations, including unique issues of state and local concern, and applicability within modern Pennsylvania jurisprudence. *Commonwealth v. Crouse*, 729 A.2d 588, 594 (Pa. Super. 1999), *appeal denied*, 747 A.2d 364 (Pa. 1999) (citing *Commonwealth v. Edmunds*, 586 A.2d 887, 895 (Pa. 1991)).

⁴(1) *Commonwealth v. Melendez*, 676 A.2d 226 (1996); (2) *Commonwealth v. Matos*, 672 A.2d 769, 776 (Pa. 1996); (3) *Commonwealth v. White*, 669 A.2d 896, 901 (Pa. 1995); (4) *Commonwealth v. Brion*, 652 A.2d 287, 290 (Pa. 1994); (5) *Commonwealth v. Mason*, 637 A.2d 251, 256–57 (Pa. 1993); (6) *Commonwealth v. Martin*, 626 A.2d 556, 560–61 (Pa. 1993); (7) *Commonwealth v. Edmunds*, 586 A.2d 887, 888 (Pa. 1991); (8) *Commonwealth v. Melilli*, 555 A.2d 1254, 1258 (Pa. 1989); (9) *Commonwealth v. Johnston*, 530 A.2d 74, 79 (Pa. 1987); (10) *Commonwealth v. Sell*, 470 A.2d 457, 468 (Pa. 1983); (11) *Commonwealth v. DeJohn*, 403 A.2d 1283, 1289 (Pa. 1979).

(i). Text of Article 1, Section 8.

Article 1, Section 8 of the Pennsylvania Constitution provides:

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

Pa. Const. Art. I, § 8. Despite that the protections awarded under Article 1, Section 8 predate the United States Constitution, the guarantees under the Fourth Amendment are similar. The Fourth Amendment states:

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

U.S. Const. Amend. IV. Given the similarity and the plain reading of each provision, this factor does not provide a compelling reason to declare that criminal-type probable cause is needed for an administrative warrant as *Camara*-type probable cause has been deemed constitutional under the Fourth Amendment.

(ii). The History of Article 1, Section 8.

The probable cause requirement in Article 1, Section 8 traces its origin to its original Constitution of 1776. *Edmunds*, 586 A.2d at 394. The Pennsylvania Supreme Court has explained that the text of Article 1, Section 8 remains nearly identical to the language drafted over 200 years ago. *Id.* In analyzing the history of this constitutional provision, the purpose for which Article 1, Section 8 was drafted is instructive. The Pennsylvania Constitution was “drafted in the midst of the American Revolution, as the first overt expression of independent from the British Crown.” *Id.* at 392. “The primary purpose of the warrant requirement [in Article 1, Section 8] was to abolish

‘general warrants’, which had been used by the British to conduct sweeping searches of residences and businesses, based upon generalized suspicions.” *Id.* at 394. The original purpose for which the warrant requirement was enacted differs greatly from the purpose of administrative warrants today. While the British utilized general warrants to search for criminal or treasonous activity, administrative warrants are utilized to ensure municipal code compliance to promote health, safety, and welfare. Therefore, the motive for criminal searches is vastly different than the motive for rental inspections. *Tobin*, 828 A.2d at 419.

Furthermore, criminal searches are far more intrusive than rental inspections. *Id.* In executing the Ordinances, Pottstown’s Inspectors are not *searching*; rather, they are *inspecting* for life safety items. (Drobins Dep., Ex. Q at pg. 138, ln. 1-7; Gonzalez Dep, Ex. N at pg. 25, ln. 22-23; Place (Corporate Designee) Dep., Ex. K at pg. 22, ln. 4-12). The inspection is of the rental unit itself, not the tenant’s body or possessions, so it is “a relatively limited invasion” of the tenants’ privacy. *Camara*, at 537; *Tobin*, *supra* at 422-23. The rental inspections are also less intrusive as landlords and tenants receive advance notice, unlike criminal searches permitted by general warrants. The advance notice clearly demonstrates the purpose of the inspection is to inspect the conditions of the unit, not the tenant or the tenant’s possessions. Further, advance notice mitigates any intrusiveness; and no constitutional protections are waived for the inspection.

The purpose of general warrants implemented nearly 200 years ago are materially different from the purpose for which *Camara*-type administrative warrants are used to promote public health, safety, and welfare. In considering the history of Article 1, Section 8, the reason for which it was enacted does not compel this Court to determine that criminal-type probable cause is needed for administrative warrants as the purpose and level of intrusion is materially distinguishable from the general warrants implemented in the 18th century.

As argued above, the Pennsylvania Supreme Court has already determined that *Camara* type ‘administrative searches’ provide for a *reduced* Fourth Amendment and Article 1, Section 8 protection. Additionally, the Commonwealth Court has provided several instructive cases supporting *Camara*-type administrative warrants. See, *Greenacres, Simpson, Tobin*, supra. In each case, the Court favored the health, safety, and welfare of citizens over the landlord’s rights, thus tacitly determining that administrative warrants would not constitute an unreasonable search or seizure. Specifically, *Simpson* determined that the city’s ordinance provided adequate protection from unreasonable searches and seizures under Article 1, Section 8. *Simpson*, 740 A.2d at 291. Accordingly, this factor does not provide a compelling reason to declare *Camara*-type administrative warrants unconstitutional under Article 1, Section 8.

Conversely, there is no history of cases in Pennsylvania in the over 50 years since the *Camara* decision that has created a greater Article 1, Section 8 protection as it relates to administrative warrants; and specifically, for those ‘dragnet’ style warrants for routine and periodic rental inspections.

Therefore, history requires this Court to deny Plaintiffs’ request to provide greater Article 1, Section 8 protections for administrative warrants for the periodic and routine inspection of rental properties in Pottstown.

(iii). Related Case Law from Other States.

At least fifteen (15) states, including Pennsylvania, have applied *Camara* and determined that administrative warrants are legally sufficient for rental inspections. (California, Connecticut, Florida, Iowa, Kansas, Kentucky, Minnesota, Mississippi, Missouri, Nevada, New York, Virginia, Washington, and Wisconsin.)

Most recently, the Minnesota Supreme Court determined that their states constitution did not require individualized probable cause for an administrative warrant to inspect a rental property. *City of Golden Valley v. Wiebesick*, 899 N.W.2d 152 (Minn. 2017). This was favorably cited by the Pennsylvania Supreme Court’s analysis in the *Interest of Y.W.-B.*:

Dragnet searches are not predicated on individualized showings of probable cause, nor indeed on **any** kind of individualized suspicion. *See City of Golden Valley v. Wiebesick*, 899 N.W.2d 152, 161 (Minn. 2017) (“Administrative search warrants must be supported by probable cause; not individualized suspicion but ‘reasonable legislative or administrative standards for conducting an area inspection.’”) (quoting *Camara*, 387 U.S. at 538, 87 S.Ct. 1727).

Interest of Y.-W.-B., at p. 622-623.

Additionally, see, e.g., *Owens v. City of North Las Vegas*, 450 P.2d 784, 787 (1969) (“Where considerations of health and safety are involved, the facts that would justify an inference of ‘probable cause’ to make an inspection are different from those that would justify an inference when a criminal investigation has been undertaken.”); *Sokolov v. Freeport*, 420 N.E.2d 55, 58 (N.Y. 1981) (“In addition, and of compelling significance, the *Camara* opinion expressly provided that the strict standards attending the issuance of a warrant in criminal cases are not applicable to the issuance of a warrant authorizing an administrative inspection.”); *City of Seattle v. Leach*, 627 P.2d 159, 161 (Wash. 1981) (“Equally well established is the principle that a lesser degree of probable cause is necessary to satisfy issuing an inspection warrant than is required in a criminal case.”); *Louisville Bd. of Realtors v. Louisville*, 634 S.W.2d 163 (Ky. Ct. App. 1982) (applying *Camara* to affirm that requiring inspections of rental housing before tenant moves in does not violate landlord’s rights under the Kentucky Constitution or Fourth Amendment); *City and County of San Francisco v. Mun. Court*, 167 Cal. App. 3d 712, 720-21 (Cal.App.1st Dist. 1985) (applying *Camara*’s balancing test to establish probable cause for inspection); *City of Seattle v. McCready*,

931 P.2d 156, 159 (Wash. 1997) (upholding the constitutionality of an administrative warrant issued on the basis of *Camara* probable cause); *Board of Cnty. Comm'rs v. Grant*, 954 P.2d 695, 699 (Kan. 1998) (“We are convinced ... based on the analysis found in *Camara* and *See* that the existence of an administrative policy or ordinance which specifies the purpose, frequency, scope, and manner of the inspection provides a constitutional substitute for probable cause that a violation has occurred.”); *In re Search Warrant of Columbia Heights v. Rozman*, 586 N.W.2d 273, 275-76 (Mn. Ct. App. 1999) (concluding administrative warrant for rental-housing inspection was properly issued and enforceable by civil contempt); *Ashworth v. City of Moberly*, 53 S.W.3d 564, 578-80 (W.D. Mo. App. 2001) (applying *Camara* to affirm that requiring inspections of rental housing does not violate the Missouri Constitution or Fourth Amendment); *State v. Jackowski*, 633 N.W.2d 649, 654 (Wis. Ct. App. 2001) (“Thus, Jackowski’s claim that the application for the inspection warrant was deficient because it did not establish probable cause to believe code violations then existed in his building is unavailing.”) (citing *Platteville Area Apartment Assoc. v. City of Platteville*, 179 F.3d 574 (7th Cir. 1999)); *Logie v. Town of Front Royal*, 58 Va. Cir. 527, 533-34 (2002) (applying *Camara* probable cause to a rental inspection ordinance); *Florida Dept. of Agriculture and Consumer Services v. Haire*, 836 So.2d 1040, 1058 (Fl. App. 4 Dist. 2003) (applying *Camara* to find “relaxed” probable cause evaluation in administrative search situations); *State v. Carter*, 733 N.W.2d 333, 337 (Iowa 2007) (applying *Camara* to find that administrative search warrant does not require the probable cause necessary for a criminal warrant); *Town of Bozrah v. Chmurynski*, 36 A.3d 210, 215 (Conn. 2012) (requiring criminal-type probable cause to issue the warrant because “the proposed search is not part of a periodic or area inspection program,” like in *Camara*); *Griffith v. City of Santa Cruz*, 207 Cal. App. 4th 982, 993 (Cal.App.6th Dist. 2012) (affirming precedent rejecting Fourth Amendment challenge to an ordinance allowing

inspection without consent only by way of an administrative warrant); and *Crook v. City of Madison*, 168 So. 3d 930, 940 (Miss. 2015) (applying *Camara* probable cause to invalidate ordinance on other reasons). The decisions of the states who have upheld *Camara* to enforce municipal codes in accordance with their state’s constitutions fail to provide a compelling reason for this Court to determine *Camara*-type probable cause for administrative warrants is legally insufficient under Article 1, Section 8.

(iv). Policy Considerations.

• Health, Safety, and Welfare.

The same public health and safety interests endorsed in *Camara* under the Fourth Amended are the same interests embraced by the Pennsylvania Constitution. Article 1, Section 2 of the Pennsylvania Constitution states that the government is instituted for the “peace, safety and happiness” of its people. Pa. Const. Art. I, § 2. The Ordinances clearly establish the intended purpose for the rental inspections is to promote the health, safety, and welfare of its citizens by encouraging owners and occupants to maintain and improve the quality of life and quality of rental housing within the community. (Ex C; Chapter 11, § 201(1)). The very purpose of the Ordinances has been endorsed by Article 1, Section 2 of the Pennsylvania Constitution.

In weighing public health, safety, and welfare against a landlord/tenant’s right to privacy, Courts have determined that permitting mandatory rental inspections to ensure code compliance outweighs the landlord/tenant’s rights. See generally, *Camara*, *Greenacres*, *Simpson*, and *Tobin*. The purpose of the Ordinances (health, safety, and welfare) does not provide a compelling reason to determine *Camara*-type probable cause for administrative warrants is unconstitutional under Article 1, Section 8.

Furthermore, vital to the policy consideration factor is that periodic rental inspections are the only effective way to ensure safety in rental properties as many hazardous conditions cannot be seen from the outside of a residence. “Many such conditions—faulty wiring is an obvious example—are not observable from outside the building and indeed may not be apparent to the inexpert occupant himself.” *Camara*, 387 U.S. at 537. For example, an external inspection cannot determine plumbing issues, electrical issues, smoke detector issues, fire hazards, mold, and bed bugs (See, e.g. Failed Inspection Reports attached hereto and marked Exhibit “Z”). Without periodic inspections, there are no reasonable means in which Pottstown could employ to ensure and promote safe living conditions. Furthermore, tenants may be fearful in complaining to their landlords in fear of retribution, including but not limited to eviction. As confirmed by *Camara*, “[t]here is unanimous agreement among those most familiar with [the residential inspection] field that the only effective way to seek universal compliance with the minimum standards required by municipal codes is through routine periodic inspections of all structures.” 387 U.S. at 535-36.

To the extent that Plaintiffs may argue that the landlords can accomplish the objective of the rental inspection on their own, such an argument lacks merit as the evidence reveals examples of landlords who refuse to remedy health, safety, and welfare issues or engage in retaliatory conduct (See, Failed Inspection Reports, Ex. Z; and Tenant Complaints attached hereto as Exhibit “AA”). For example, Pottstown tenants have reported that: their heat was not working, their roof was falling off, and their landlord refused to fix the issues; their landlord refused to respond to complaints about a broken toilet, a non-functional shower, and a broken front door lock and then engaged in retaliation and intimidation; their landlord has done nothing about pest infestation and lack of smoke detectors; their landlord refusing to remedy plumbing issues wherein sewer was coming up through the sink, mold, a rotting deck, and a hole in the basement; a bed bug issue not

being addressed by their landlord; and an issue as serious as radiation not being addressed by their landlord. (Tenant Complaints, Ex. AA). Given that the purpose of the Ordinances is to protect the health, safety, and welfare of the public, and that the means to accomplish the same (the mandatory inspections) are rationally related to the same, this policy consideration weighs in favor permitting of *Camara*-type administrative warrants under Article 1, Section 8.

- **The Rental Inspection Program is Not a Revenue-Generating Program.**

The Pottstown Defendants assert any such claim is precluded as it was not pled by Plaintiffs in the Amended Complaint. (See, Ex. A). Despite this, the fees related to the Ordinances are reasonable and do not suggest that the rental inspection program is an invalid revenue-generating program. The Ordinances were not created to generate fees; which are calculated solely based on the cost to enforce the Ordinances (Place (Corporate Designee) Dep., Ex. K at pg. 163-166). Defendant Place testified that the fees are based upon the time and cost of hours worked by the Inspectors (inclusive of health care benefits, taxes, FICA, unemployment, etc.); the time and cost of hours worked by administrative staff for the administrative portion of the program Inspectors (inclusive of health care benefits, taxes, FICA, unemployment, etc.); and the cost to operate the administrative building. *Id.* As such, the Ordinances fees are implemented only to cover the costs of the rental program.

Furthermore, Pennsylvania Courts have held that rental inspection fees are not taxes. *Greenacres*, 482 A.2d at 575. A rental inspection and licensing fee based on the cost of employing inspectors and clerical and administrative costs was not an invalid revenue-raising measure. *Id.* Similar to *Simpson*, the fees associated with the Ordinances are not to raise general revenue but are reasonably related to the cost of implementing the rental inspection program and paying the

Inspectors/administrative staff. 740 A.2d at 292. A fee imposed to register, license, and inspect a rental unit is a regulatory fee, and not a tax. *Id.* As determined by the Court:

A licensing fee, of course, is a charge which is imposed pursuant to a sovereign's police power for the privilege of performing certain acts, and which is intended to defray the expense of regulation. It is to be distinguished from a tax, or revenue producing measure, which is characterized by the production of large income and a high proportion of income relative to the costs of collection and supervision.

Id. citing *Greenacres*, 482 A.2d at 575. Accordingly, even assuming Plaintiffs pled such a claim, which is denied (and therefore precluded), the rental inspection program is not an invalid revenue raising program.

- **The Rental Inspection Program is Not a Police Policy in Disguise.**

Despite the Plaintiffs anticipated argument (not pled) - to interpret the rental inspection program as a program seeking to aid law enforcement in making arrests, the record reveals otherwise. From the inception of the Ordinances in 2015, police have been involved in two limited instances wherein an Inspector feared for his or her safety. (See Police Incident Reports attached hereto as Exhibit "BB"). If something illegal (i.e., criminal) is observed during the inspection, the Inspectors disregard it and continue with the inspection as searching for contraband or otherwise criminal activity is not within the scope of their jobs (Weller Dep., Ex. P at pg. 35, ln. 19-22; Gonzalez Dep., Ex. N at pg. 24, ln. 23-23 – pg. 25, ln. 1-18). The scope of the Inspectors' job is to inspect life safety items, not to engage in searches (Place (Corporate Designee) Dep., Ex. O at pg. 22, ln. 4-12). Inspectors are not trained on what to do is drugs are seen or smelled during inspections as that simply is not within the scope of their job duties (Gonzalez Dep. Ex. N at pg. 35, ln. 23-23 – pg. 36, ln. 1-3). Inspectors only call the police if they fear for their safety (Drobins Dep., Ex. Q at pg. 81, ln. 6-13; Weller Dep., Ex. P at pg. 35, ln. 23-24 – pg. 36, ln. 1-4). The

Borough Police Department has confirmed that an inspector's safety is more important than making an arrest (September 26, 2018 Email (REL00305919) attached hereto as Exhibit "CC").

The evidence, taken in a light most favorable to Plaintiffs fails to support such an argument. For example, there is no police policy about interacting with the Licensing and Inspection Department (N.T. Chief M. Markovich, Ex. DD May 4, 2023, p. 21); he is unaware that any collaboration between inspections and police helped with any criminal investigations (p. 26); inspectors may contact police if they feel unsafe or in a dangerous situation (p.22). And historically, Chief Markovich was aware of an occasion where an inspector contacted the police – indicating they stumbled upon a drug house, with cameras, multiple people in the rooms and drugs out in the open. Ex. DD at p. 40.

While Plaintiffs may attempt to paint a narrative of inspectors as an arm of the police department, not only is this denied, but Plaintiffs have presented no evidence of the same. The times inspectors called were due to safety concerns – drugs were seen, but as Chief Markovich noted, anytime one observes drugs or a supplier of drugs, it could be a dangerous situation. Ex. DD at p. 25. This also is borne out by Sgt. Kropp's email to Ms. Drobins that their safety is the utmost concern. See, Ex. EE.

This further suggests that administrative warrants, based on *Camara*-type probable cause, are sufficient in the rental inspection context and consistent with Article 1, Section 8 as the Inspectors are not searching for criminal activity or paraphrenia. Aiding the police in fighting crime is not a function of Pottstown's rental inspection program (Place (Corporate Designee) Dep., Ex. O at pg. 62, ln. 15-20) and therefore the need for criminal-type probable cause is not compelling pursuant to *Edmunds*.

As the *Edmunds* factors fail to support a greater protection of Article 1, Section 8 as it relates to administrative warrants (i.e. the requirement for individualized probable cause); this Court must grant the Pottstown Defendants' Motion for Summary Judgment.

ii. The Ordinances are Facially Valid.

1. The Ordinances are Presumed Constitutional.

Municipal ordinances are presumed constitutional; therefore, as a matter of law, the Borough's Ordinances are facially valid. *Com. v. Winfree*, 408 Pa. 128, 134, 182 A.2d 698 (1962). A municipality has the authority to create and enact ordinances necessary to protect the health, safety, and welfare of its citizens provided that the goals of the said ordinances and the means used are reasonably necessary and not unduly burdensome. *Com. v. Creighton*, 639 A.2d 1269, 1300 (Pa. Cmwlth. 1994); see also 8 Pa.C.S.A. § 1006 (Borough Code providing the duty of borough council to enact and amend ordinances consistent with Pennsylvania law).

Moreover, the Pennsylvania Supreme Court has reinforced that municipalities have the power to enact laws relating to landlord and tenant relations as long as the same do not conflict with the Pennsylvania Landlord Tenant Act. *Warren v. City of Philadelphia*, 115 A.2d 218, 221 (Pa. 1955). Pottstown's Ordinances (requiring inspection upon reasonable notice for the purpose of maintaining the health, safety, and welfare of tenants) do not violate the Pennsylvania Landlord Tenant Act. See, *Berwick Area Landlord Ass'n v. Borough of Berwick*, 48 A.3d 524, 530 (Pa. Commw. Ct. 2012) (confirming the Borough's rental inspection ordinance (seeking to protect the health, safety, and welfare of its residents) did not violate the PA Landlord Tenant Act). Accordingly, the Ordinances are facially valid as the Borough has acted within its statutory authority to enact legislation consistent with Pennsylvania law and more specifically, the Pennsylvania Landlord Tenant Act.

2. The Ordinances are Rationally Related to the Health, Safety, and Welfare of the Public.

An ordinance passes the rational basis test if it is not “... unreasonable, unduly oppressive or patently beyond the necessities of the case, and the means which it employs must have a real and substantial relation to the objects sought to be attained.” *Nixon v. Com.*, 839 A.2d 277, 287 (Pa. 2003). The “objects sought to be attained” are maintaining and promoting the public health, safety, and welfare of Borough citizens (See Ex. C; Chapter 11; §201(1)). The means by which the promotion of health, safety, and welfare is accomplished is through rental inspections. Pottstown’s Ordinances pass the rational basis test because the Ordinances are not unreasonable as the inspections are limited to safety issues (Gonzalez Dep., Ex. N at pg. 25, ln. 22-23) and reasonable notice is provided in advance of the inspections.

The inspections are reasonably related to the health, safety, and welfare of citizens as the intended purpose of the same is to “maintain and improve the quality of life and quality of rental housing within the community...” (See Ex. C; Chapter 11; §201(1)). Likewise, to the extent that the Plaintiff may argue mandatory inspections are not rationally related to the goals of the Ordinances as landlords can accomplish the objective of the rental inspections without an invasion of privacy, the same lacks merit as indicated in the dozens of tenant complaints wherein landlords either refuse to remedy issues or engage in retaliation. (See Tenant Complaints, Ex. AA). As evidenced by the record, all landlords cannot be trusted to remedy safety issues within their respective rental units. Mandatory inspections are the “only effective way to seek universal compliance” (*Camara*, 387 U.S. at 535-36); therefore, inspections are undoubtedly rationally related to promoting the health, safety, and welfare of the constituents.

Further, an argument that landlords are capable of remedying health, safety, and welfare issues is further undermined by the fact that landlords are not qualified to address issues as are the

Borough Inspector. For example, Mr. Camburn testified that he is not trained in electrical work, plumbing, or code enforcement (Camburn Dep., Ex. T at pg. 53, ln. 23-25; pg. 54, ln. 1-5). Unlike Borough landlords, Pottstown Inspectors undergo continual and specific training as it relates to residential code enforcement (Place (Corporate Designee) Dep., Ex. H at pg. 85-87). Therefore, Pottstown’s rental inspection program wherein qualified and independent individuals inspect the rental unit for safety issues (with reasonable and advanced notice) is reasonably related to the purpose of the Ordinances.

Moreover, the Pennsylvania Courts have likewise determined that rental inspection ordinances are facially constitutional. See, *Greenacres*, 482 A.2d at 1356 (the township’s ordinance, aimed to protect the health, safety, and welfare of its citizens by to ensuring rental unit compliance with minimal housing standards, deemed facially constitutional); see also *McSwain v. Commonwealth*, 520 A.3d 527 (Pa. Cmwlth. 1987) (city ordinance requiring housing code inspections in rental units deemed facially constitutional); *Simpson*, 740 A.2d at 287 (ordinance requiring inspection subject to constitutional restrictions (i.e., reasonable time and express standard for search warrant) provided adequate protection for unreasonable searched under the PA Constitution). Given that Pottstown’s Ordinances are rationally related to maintaining and promoting the health, safety, and welfare of its citizens, *Greenacres*, *McSwain*, and *Simpson* instruct this Court to deem the Ordinances facially valid as a matter of law.

iii. The As-Applied Challenge Fails.

1. The Ordinances are Not Discriminatorily Applied.

An as-applied challenge “does not contend that a law is unconstitutional as written but that its application to a particular person under particular circumstances deprived that person of a constitutional right[.]” *Johnson v. Allegheny Intermediate Unit*, 59 A.3d 10, 16 (Pa. Cmwlth. 2012)

(quoting *Commonwealth v. Brown*, 26 A.3d 485, 493 (Pa. Super. 2011)). The rental inspection program is applied in neither an arbitrary nor a discriminatory manner. On the contrary, the Inspectors are given a Rental Checklist (Ex. F); Rental SOPs (Ex. G); and a uniform Rental Inspection Report form (Ex. M) to ensure that all Inspectors are consistent in the execution of the inspections (Place (Corporate Designee) Dep. Ex. H at pg. 96-97). The Inspectors follow the rental inspection checklist as the inspection occurs (Gonzalez Dep., Ex. N at pg. 15, ln. 16-24 – pg. 16, ln. 1-20). To ensure transparency, landlords and tenants are provided the Rental Checklist and Rental Inspection Report to provide notice of what the inspection will involve and to ensure each Inspector is consistent in inspecting (Place (Individual Capacity) Dep., Ex. K at pg. 292, ln. 4-11). Furthermore, all rental properties are treated the same and subject to the same requirements (Place (Corporate Designee) Dep., Ex. O at pg. 46, ln. 2-17). Therefore, the application of the Ordinances is constitutional.

2. The Inspection Process Does Not Violate Personal Privacy Rights.

Like the Fourth Amendment, Article 1, Section 8 of the Pennsylvania Constitution does not ban all searches and seizures; only *unreasonable* searches and seizures. U.S. Const. Amend. IV; Pa. Const. Art. I, § 8; *Commonwealth v. Miller*, 518 A.2d 1187, 1191 (Pa. 1986) (emphasis added). Likewise, such an administrative search does not waive one’s constitutional rights. In fact, the Ordinances provide adequate protection against unreasonable searches (Ex. C generally). First, unlike criminal searches, landlords are given reasonable advance notice of the inspection. *Id.* If the scheduled inspection time is not compatible with the landlord or tenant’s schedule, Pottstown will work with the individual to find an agreeable time (Camburn Dep., Ex. T. pg. 94, ln. 5-18). Second, if a landlord or tenant does not consent to an inspection, Pottstown must obtain an administrative warrant (Ex C; Chapter 11; § 203(I)(3)). The administrative warrants are

reasonable as the probable cause is based on non-discriminatory, routine, periodic inspections as a part of code compliance. It is also reasonable as the inspections are not intended to search for criminal activity or contraband. Inspections are far less intrusive and limited only to safety issues. Third, as stated above, the Inspectors are guided by the same Rental Checklist and Inspection Report to ensure that each inspection is consistent and limited only to the items contained therein. The Ordinances do not permit unreasonable searches; rather, reasonable inspections. Accordingly, the Ordinances and the ability to obtain *Camara*-type administrative warrants therein are consistent with Article 1, Section 8.

Further, the inspection process itself does not violate personal privacy rights. Inspectors are not at rental units to scrutinize a tenant's way of life; rather, the Inspectors are there merely to ensure there is no safety code violation (Gonzalez Dep., Ex. N at pg. 42, ln. 4-7). When Inspectors complete their duties, they do not talk about what they see in other people's homes (Drobins Dep., Ex. Q at pg. 101, ln. 15-24 – pg. 102, ln. 1-2). The only time Inspectors discuss what is seen in a tenant's home is with each other as it relates to a code violation (*Id.*). Inspectors do not search under tenant's beds or move items (other than a gas stove to ensure there is a shut-off valve) (Place (Corporate Designee) Dep., Ex H at pg. 91, ln. 1-4; Place (Individual Capacity), Ex. K at pg. 259, pg. 7-24 – pg. 260, ln. 1-10). If there is a light in a closet (which requires permanent covers), the Inspector will open the closet only to ensure there is a permanent cover. (Place (Corporate Designee) Dep., Ex H at pg. 124-125). Inspectors are not "searching" through tenant's personal items as Plaintiffs allege. Inspectors do not look in/under cabinets unless there is a life safety issue that needs to be inspected (i.e., plumbing). The primary function of the Ordinances is to determine if the unit is habitable and meets life safety criteria such as safety in electrical systems, fire extinguishers, smoke detectors, and deadbolt latch systems (Place (Individual Capacity) Dep., Ex.

K at pg. 36, ln. 10-24 – pg. 37, ln. 1-4). Inspections are not searching for criminal activity or paraphernalia as that is not within the scope of the inspections.

To the extent that tenants have items that they would not want an Inspector to see (i.e., religious items, lifestyle items, etc.), the landlords and tenants are provided with advance notice of the date and time of the inspection. Therefore, any argument that personal items viewed violate a tenant’s right to privacy is undermined by the advance notice provided by the Ordinances.

Lastly, the anticipated argument that the Inspectors entry into the rental premises violates privacy rights is further invalidated by the provision in Mr. Camburn’s leases (which he uses for most tenants) wherein he has the right to enter the property to inspect the premises (Lease, Ex. V; Camburn Dep., Ex. T at pg. 46, ln. 12- 25 – pg. 47, ln. 1-2). A landlord’s entry into a rental unit to inspect the premises, or the entry of a landlord-hired handyman, is no greater level of intrusion than a Borough Inspector entering a rental unit to ensure code compliance.

Accordingly, the application and execution of Pottstown’s mandatory and periodic rental inspections are constitutional.

3. Evidence of Consent for Administrative Warrants.

Mr. Camburn’s testimony clearly demonstrates that neither he nor his tenants have an issue with granting access to the Inspectors after a *Camara*-type administrative warrant is obtained (Camburn Dep., Ex. T. at pg. 93, ln. 15-25 – pg. 94, ln. 1-4; pg. 109, ln 23-25; pg. 110, ln. 1). For the Camburn tenants who do not provide consent for entry without an administrative warrant, Mr. Camburn provides a template of how tenants may request an administrative warrant (Camburn Dep. Ex. T at pg. 92, ln. 11-25 – pg. 93, ln. 1-9; see also, Administrative Warrants, Ex. R; Ex. U; Requests for Warrants). Of Mr. Camburn’s 28 rental properties (approximately), there have been numerous instances wherein an administrative warrant was obtained, and the inspection occurred

thereafter (Camburn Dep., Ex. T at pg. 10, ln. 5-16). Curiously, Camburn along with his tenants (and other Landlords) advised Pottstown that once an administrative warrant is obtained, they will coordinate with a date/time for the inspection to occur. Plaintiffs cannot have it both ways. They can't complain an administrative warrant based on less than individualized probable cause is insufficient, but then agree to the inspection based upon the reduced protections.

C. Defendant Place Should be Dismissed and/or is Entitled to Official Immunity.

i. The Claims Against Defendant Place Fail.

Keith Place is sued only in his official capacity as the Director of Pottstown's Licensing and Inspection Department (ACOM, ¶ 9). As such, the claim against Place is duplicative of the claims against Pottstown. See, *Watkins v. Pennsylvania Dep't of Corr.*, 196 A.3d 272, 275 (Pa. Cmwlth. 2018) (a suit against a state official in his official capacity constitutes a suit against the state itself). As Pottstown is a named Defendant, the claims against Defendant Place are redundant and thus moot.

Furthermore, Place, as the Director of Pottstown's Licensing and Inspections Department, does not have the authority to enact or create ordinances. Pottstown's Borough Code expressly provides that it is Borough Council that has the statutory authority to enact ordinances. 8 Pa.C.S.A. § 1006(4). Likewise, it is only Pottstown Council (not Place) that can revise, amend, or repeal ordinances. *Id.* Accordingly, the claims asserted against Place fail as a matter of law and must be dismissed.

ii. Alternatively, Place is Entitled to Official Immunity.

To the extent that this Court does not dismiss the claims against Place pursuant to 8. Pa.C.S.A. § 1006, he is entitled to official immunity pursuant to the Pennsylvania Political Subdivision Tort Claims Act ("PSTCA") which provides official immunity from civil suits to

government officials when the acts are within the course and scope of their duties. See, *Heicklen v. Hoffman*, 761 A.2d 207, 209 (Pa. Cmwlth. 2000). Official immunity will be granted to the employee when the conduct which gave rise to the claim was authorized or required by law or he acted in good faith and reasonably believed the conduct was authorized or required by law. 42 Pa.C.S.A § 8546(2).

The Ordinances specifically provides for the biennial inspection, and therefore, Place, in his official capacity was acting in compliance with the local law. As Director, Place’s responsibilities include making and administering policies as they relate to enforcing the Borough Code (Place (Corporate Designee) Dep., Ex. H at pg. 25, ln. 17-23). Therefore, Place is responsible for ensuring the rental inspection program is followed (Place (Corporate Designee) Dep., Ex. J at pg. 151, ln. 20-24 – pg. 152, ln. 1). Accordingly, at all relevant times hereto, Place has acted within the course and scope of his role as Licensing and Inspection Director and pursuant to the Ordinances.

Moreover, the Amended Complaint is devoid of any allegations that Place acted with actual malice of willful misconduct. See, 42 Pa.C.S.A § 8550 (official immunity shall not be applicable where there has been a judicial determination of, *inter alia*, actual malice or willful misconduct). Therefore, any claim against Place is barred by official immunity under PSTCA. Accordingly, Place is entitled to official immunity and must be dismissed from this action, with prejudice.

D. The Pennsylvania Constitution Fails to Provide for Monetary Damages.

In addition to Plaintiffs’ request for declaratory judgment, they seek nominal damages of \$1.00 (ACOM, pg. 19, ¶ C). It is well established that “neither Pennsylvania statutory authority, nor appellate case law has authorized the award of monetary damages for a violation of the Pennsylvania Constitution.” *Jones v. City of Philadelphia*, 890 A.2d 1188, 1208 (Pa. Commw. Ct. 2006) citing *Robbins v. Cumberland Cnty. Children & Youth Servs.*, 802 A.2d 1239, 1251 (Pa. Cmwlth.2002). There is no direct cause of action for monetary damages for an Article I, Section

8 Pennsylvania Constitution violation. *Balletta v. Spadoni*, 47 A.3d 183, 193 (Pa. Commw. Ct. 2012). Therefore, as a matter of law, Plaintiffs' claim for monetary damages fails.

VII. RELIEF REQUESTED

For the reasons stated above, the Pottstown Defendants respectfully request that this Honorable Court enter the proposed Order entering summary judgment in their favor and dismissing all claims against the Borough of Pottstown and Keith A. Place, with prejudice.

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AND KEITH A. PLACE**

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

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

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Date: July 31, 2023

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