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LYNN M. TODARO
STARK COUNTY OHIO
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IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

DEPARTMENT OF DEVELOPMENT SERVICES FOR THE CITY OF NORTH CANTON, OHIO,	:	**Case No. 2023-CV-1178**
	:	**JUDGE FARMER**
Plaintiff,	:	
v.	:	**PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS AND MOTION FOR SUMMARY JUDGMENT**
CF HOMES LLC *et al.*,	:	
Defendants.		

This case is about whether Ohio cities may cajole Ohio courts into rubber stamping boilerplate warrant applications that attempt sweeping top-to-bottom searches of Ohioans' private homes - - without evidence that those Ohioans or their homes pose any threat whatsoever. They may not. And the City cannot alter this reality by insisting that "anything goes" so long as it merely labels its attempts as seeking "administrative warrants."

The Ohio Supreme Court has never adopted a bifurcated definition of the level of "probable cause" necessary to obtain a warrant that affords career criminals greater property and privacy rights than innocent Ohio families and homeowners. And this Court must now reject the City's insistence that it take the unprecedented and unjustifiable step of doing so.

Because the Ohio Constitution requires individualized suspicion of an unlawful threat prior to issuance of a warrant to conduct the intrusive search of a private home, Defendant CF Homes LLC, owner of 914 N. Main Street in North Canton, Ohio, is now entitled, pursuant to Civ. R. 12(C), to dismissal of Plaintiff City of North Canton's July 6, 2023 Petition-Complaint.

I. FACTS

The City's seeks authorization from this Court to perform an invasive search on the basis of newly-enacted North Canton Municipal Code Section 703.04. That Section first requires a "rental license," on an arbitrary and discriminatory basis, insofar as the enactment only applies to homeowners of eight or less rental units within the City:

> On and after January 1, 2023, no owner, agent, or person in charge of any non-owner occupied building of eight (8) or fewer Rental Units shall rent or let for occupancy such unit(s) or any part thereof for use as rental of residential or temporary occupancy, nor shall a person occupy such premises *unless the owner thereof holds a Rental License* and a Rental License has been issued for the unit by the Director of Permits, which license has not expired, been revoked, or otherwise become null and void.

This newly-required "rental license" apparently cannot be had without an inspection: Division (c) of Section 703.04 states, without exception, that "[u]pon the filing of an application for a Rental License and the payment of the associated application fee," that "the Department of Development Services shall cause a general inspection of the Rental Unit and premises to be made to ensure compliance with the Part 17 of the Codified Ordinances." In turn, subsection (c)(4)(C) states the following: "If a property owner fails to schedule inspections for their property within thirty (30) days from the date the application for a Rental License is filed or declines to have the Rental Unit inspected the Director of Permits: (i) may obtain an order or warrant to inspect from a court of competent jurisdiction; or (ii) may issue the Owner a Six Month Rental License for that Rental Unit."

Meanwhile, the scope of the general inspections the City seeks are exceptionally broad, even by virtue of a glance at the City's two-page inspection checklist, which demands government searches of "each sleeping room" and "each bedroom," kitchens, bath tubs, pipes, "every habitable room," all bathrooms, "any windows," within and behind all washers and dryers and other appliances, underneath the floor and on the roof, all interior "walls, ceilings, and doors," and *anywhere* "mold or mildew" *could* be. See *City of North Canton Rental Unit Inspection Form,* available online at

https://northcantonohio.gov/DocumentCenter/View/6035/Rental-Unit-Inspection-Form-FINAL?bidId=. [1]

However, the City's Inspection Form is simply the tip of the iceberg: the City claims authority to conduct inspections far more invasive than simply what its "checklist" suggests. Section 703.03(c) states that the City "shall cause a general inspection of the Rental Unit and premises to be made to ensure compliance with the Part 17 of the Codified Ordinances."

"Part 17" of the City's code addresses every square inch of the home - - far too much so to quote herein.[2] However, this scope includes everything from lawn and pools to interior electrical features, pipes and fixtures (and wherever they are located). See *Section 1701* through *Section 1719*. This scope is so broad that it even includes the City's subjective determination as to whether one's home is sufficiently "clean." Section 1701.06(a).

In attempting to enforce the forgoing, the City recently sought permission from Defendants to undertake the aforesaid search of 914 N. Main Street in North Canton. CF Homes LLC Member Lila Wohlwend courteously declined, responding "we do not consent to the rental inspection," "if they are optional, we are going to opt out of them," and "if you intend to obtain a warrant, please notify us ahead of time." See *Exhibit 1* to June 27, 2023 *Affidavit of Michael Porter.*

In response, the sole grounds the City provides for its proposed general search are flippant. *First*, the "Code Enforcement Officer for the Department of Developmental Services for the City of North Canton" affirms under oath that "the real property located at 914 North Main Street in North Canton is owned by CF Homes," and "has never had a rental inspection." *Porter Affidavit*, ¶7-8. *Second*, "CF Homes sent the Department a letter denying the Department access."

These two factual allegations are the sole bases upon which the City now seeks rubber-stamp authorization to perform the very type of top-to-bottom generalized home search American Colonists wrote

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1 *Exhibit 1* to Affidavit of Lila Wohlwend, Last checked September 5, 2023.

2 The entirety of this "Part" is located online at *https://northcantonohio.gov/478/Part-17-Property-Maintenance-Code.*

the Fourth Amendment to end. There is no factual allegation of any criminal conduct or other unlawful threat taking place at 914 North Main Street. Nor does any text of any of the City's Municipal Code sections require evidence of such conduct or such a violation, as it must. The only facts plead before this Court are those of CF Homes LLC member Lila Wohlwend, who affirms that there are neither any meaningful violations of law nor any conditions that pose a hazard to anyone at 914 N. Main Street in North Canton. *Affidavit of Wohlwend,* ¶2, 3, 11.

Accordingly, the home at 914 N. Main remains in excellent condition, and a threat to nobody. Nevertheless, the City's code fails to explain with clarity[3] what happens to a homeowner and his or her tenants when either (1) it fails to apply for a warrant; or (2) it applies for a warrant and that application is denied. And the City now appears to insist on levying mounting daily fines and other draconian penalties on those who simply honor preexisting leases without ushering in an impermissibly broad invasion of their tenants' private homes. See *Section 703.99*; Exhibit 2 to Affidavit of Wohlwend, August 24, 2023 *Notice of Administrative Warning.*

II. STANDARDS

"[A] motion for judgment on the pleadings has been characterized as a belated Civ. R. 12(B)(6) motion for failure to state a claim upon which relief can be granted."[4] The standard of review for a motion for judgment on the pleadings pursuant to Civ. R. 12(C) is similar to the standard of review for a motion to dismiss pursuant to Civ. R. 12(B)(6).[5] The Court may dismiss under Civ. R. 12(C) if the Court finds that the nonmoving party can prove no set of facts in support of his claims that would entitle him to relief.[6]

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3 While the City's code appears to suggest that homeowners could be issued a temporary six-month license that would continue to permit them to house their tenants, the City has not offered that option to CF Homes, instead threatening punishment in response to the absence of an inspection at 914 N. Main Street.

4 *Gawloski v. Miller Brewing Co.*, 96 Ohio App.3d 160, 163 (9th Dist. 1994).

5 *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 569-70 (1996).

6 *Id.* at 570.

Pursuant to Civil Rule 12(C), the Court should consider both the complaint and the answer.[7] Further, pursuant to Civ. R. 10(C) and applicable Ohio case law, "when a document is attached to and incorporated by reference into a pleading, it may be considered as part of pleadings."[8]

Finally, Civ. R. 12(C) motions are specifically for resolving questions of law.[9] In the instant matter, with the basic facts established in the pleadings and attached evidence, the analysis confronting the court is purely legal in character once the basic facts and exhibits in the parties' pleadings are taken as given.

In the alternative, summary judgment is appropriate where the pleadings and affidavits disclose no genuine issues of material fact, and the movant is entitled to judgment as a matter of law. Ohio R. Civ. P. 56(C); *Ohio State Bar Ass'n v. Heath*, 123 Ohio St.3d 483, 484 (2009). Where there is no genuine issue of material fact, summary judgment is to be favored. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986). The existence of some factual dispute will not defeat summary judgment; rather, there must be no *genuine* issue of *material* fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). When a movant's affidavits and other evidence demonstrate lack of a genuine issue, the burden shifts to the opposing party to demonstrate the existence of a genuine issue for trial. *Celotex Corp.*, 477 U.S. at 327; *Vogias v. Ohio Farmers Ins. Co.*, 177 Ohio App.3d 391, 397-398 (11th Dist. 2008). If the nonmoving party fails to demonstrate the existence of a genuine issue for trial, summary judgment "shall be entered." *Id.*, citing *Mitseff v. Wheeler*, 38 Ohio St.3d 112 (Ohio 1988).

Here, Judgment on the Pleadings and Summary Judgment evidence before this court includes the Defendant's denials in its Answer, which are verified, the evidence attached to Plaintiff's Complaint (the City's Affidavit) and the evidence attached to Defendant's Answer (The Affidavit of Lila Wohlwend and exhibits thereto).

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7 *Id.* at 569.

8 *See*, e.g., *Vail v. Plain Dealer Publishing Co.*, 72 Ohio St.3d 279 (1995); *See also* Civ. R. 10(C) ("Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument attached to a pleading is a part of the pleading for all purposes.").

9 *State ex rel. Midwest Pride IV, Inc. v. Pontious,* 75 Ohio St.3d 565, 569 (1996).

III. LAW AND ANALYSIS

Section 14, Article I of the Ohio Constitution provides as follows: "The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the person and things to be seized."

The City relies upon two grounds for sweeping and invasive general searches of Ohioans' homes: (1) the failure of the homeowner to reflexively grant consent; and (2) the mere fact that an Ohioans' private home has never before been searched by the City. The City posits that these alone establish probable cause to issue a warrant for a general indoor and outdoor search of each and every unit and room within this home.

However, such a warrant, even when labeled "administrative," requires "probable cause." Neither of the foregoing considerations suffice. And the Ohio Supreme Court has never held and would never hold otherwise, since the warrant the City seeks fails the stricter protections of Ohioans' homes afforded by the Ohio Constitution. Accordingly, the City's application must be denied.

A. Heightened protections afforded by the Ohio Constitution requires denial of the City's warrant application.

The text of the Ohio Constitution, both on its face and as interpreted by the Ohio Supreme Court, demands meaningful "probable cause" prior to the sweeping general search of an Ohio family's private home.

The Ohio Constitution "is a document of independent force. In the areas of individual rights and civil liberties, the United States Constitution, where applicable to the states, provides a floor below which state court decisions may not fall. As long as state courts provide at least as much protection as the United States Supreme Court has provided in its interpretation of the federal Bill of Rights, state courts are unrestricted in according greater civil liberties and protections to individuals and groups." *Arnold v. Cleveland*, 67 Ohio St.3d 35, 616 N.E.2d 163 (1993), paragraph one of the syllabus; see also *California v. Greenwood*, 486 U.S. 35, 43, 108 S.Ct. 1625 (1988)("Individual States may surely construe their own constitutions as imposing

more stringent constraints on police conduct than does the Federal Constitution"); *City of Mesquite v. Aladdin's Castle, Inc.* (1982), 455 U.S. 283, 293, 102 S.Ct. 1070, 1077 (" * * * [A] state court is entirely free to read its own State's constitution more broadly than this Court reads the Federal Constitution, or to reject the mode of analysis used by this Court in favor of a different analysis of its corresponding constitutional guarantee.").

In *State v. Mole*, the Ohio Supreme Court again declared that "[w]e once again reaffirm that this court, the ultimate arbiter of the meaning of the Ohio Constitution, can and will interpret our Constitution to afford greater rights to our citizens when we believe that such an interpretation is both prudent and not inconsistent with the intent of the framers. We also reaffirm that we are not confined by the federal courts' interpretations of similar provisions in the federal Constitution any more than we are confined by other states' high courts' interpretations of similar provisions in their states' constitutions." *State v. Mole*, 2016-Ohio-5124, ¶18.

Consequently, this Court is not restricted from applying the Ohio Constitution to deny the City's Application for an Administrative Warrant to broadly and unjustifiably intrude within Ohioans' homes.

i. Section 14 of Ohio's Bill of Rights is more protective than the Fourth Amendment.

First, the Ohio Supreme Court has applied the foregoing axioms to conclude that Section 14, Article I of the Ohio Constitution provides greater protection than its federal counterpart, the Fourth Amendment, despite "*nearly* identical language." *State v. Mole,* 2016-Ohio-5124, ¶18 ("In *State v. Brown,* we held that Article I, Section 14 of the Ohio Constitution 'provides greater protection than the Fourth Amendment to the United States Constitution against warrantless arrests for minor misdemeanors'"), citing 99 Ohio St.3d 323, 2003-Ohio-3931, syllabus; see also *State v. Brown,* 143 Ohio St.3d 444, 2015-Ohio-2438 ("minor misdemeanors that are made outside of an officer's statutory jurisdiction violate Article I, Section 14 of the Ohio Constitution" even if not the federal constitution).

Indeed, the Court has observed that academic literature is rich with reasons for construing Section 14, Article I as more protective than the Fourth Amendment to the Federal Constitution. *Id.*, at ¶18, citing Sutton, *What Does—and Does Not—Ail State Constitutional Law,* 59 U.Kan.L.Rev. 687, 707 (2011)("There is no reason to think, as an interpretive matter, that constitutional guarantees of independent sovereigns, even guarantees with the same or similar words, must be construed the same. Still less is there reason to think that a highly generalized guarantee, such as prohibition on 'unreasonable' searches, would have just one meaning for a range of differently situated sovereigns"); see also *State Constitutions and the Protection of Individual Rights,* 90 Harv.L.Rev. 489 (1977).

Second, the original public meaning of the term "probable cause" in Ohio at the time the framers and citizens inserted it into the Ohio Constitution counsels in favor of a stricter meaning than that which would permit issuance of a warrant here. The original public meaning of the term "probable cause" when the state and its voters opted to employ that language in 1851 is clear because it was defined by the Ohio Supreme Court that same year. In *Ash v. Marlow,* the Court explained as follows: "'A reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the person accused is guilty of the offence with which he is charged,' is a good definition of the term '*probable cause.*" *Ash v. Marlow,* 1851 WL 16, at 3-4 (Ohio Dec. 1851)("What then is the meaning of the term probable cause? We are content to adopt this last, as the definition of what in the law constitutes 'probable cause'"). This original understanding is bolstered by the modern definition of "probable cause" employed by the Ohio Supreme Court in 2022:

> The substance of all the definitions of probable cause is a reasonable ground for belief of guilt . . . Thus, probable cause exists when the facts and circumstances are sufficient to provide a reasonable belief that the accused has committed a crime. The inquiry requires the judge to review all the circumstances and make "a practical, common-sense decision" as to whether probable cause is present . . . "probable cause" requires "more than bare suspicion." The circumstances must demonstrate a "fair probability" that a crime has been committed.

State v. Martin, 2022-Ohio-4175, 170 Ohio St. 3d 181, 184–85, ¶17-18; see also *State v. Gonzales*, 2009-Ohio-168, ¶ 15 ("'Probable cause' is defined as "a reasonable ground for belief of guilt"); *State v. Bembry*,

2017-Ohio-8114, 151 Ohio St. 3d 502, 512, ¶ 30 ("To acquire a valid warrant, police must first convince a neutral magistrate that there is probable cause to believe that a crime has been committed, sufficient to justify pulling aside the veil of privacy from the contents of a home").

Third, a more strict and textually-accurate construction and application of the Warrants Clause of Section 14 is warranted by its text. The Ohio Supreme Court has acknowledged that the Fourth Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment, and Section 14, Article I of the Ohio Constitution contain *nearly* identical language." *State v. Jordan,* 2004-Ohio-6085, ¶¶ 54-55. One key distinction between the federal and state guarantees lies in differing punctation: separation of the clauses with a semicolon rather than a comma.

The minor punctuation differences are significant in a novel way here. Semicolons join "two clauses that are related in topic but nevertheless [are] independent of one another." *Schroeder v. W. Nat'l Mut. Ins. Co.*, 865 N.W.2d 66, 70 (Minn. 2015). On the other hand, commas "indicate[ ] the smallest break in sentence structure" and "denote[ ] a slight pause." *The Chicago Manual of Style* ¶ 6.18 (15th ed. 2003). Since the 1700s, a comma has been used to signify "a point, by which a period is subdivided into its least constructive parts." David S. Yellin, *The Elements of Constitutional Style: A Comprehensive Analysis of Punctuation in the Constitution*, 79 Tenn. L. Rev. 687, 715 (2012). Therefore, basic rules of grammar lead to the conclusion that the semicolon in Section 14, Article I textually creates two *independent* requirements in a way that the United States Constitution may not: first, that Ohioans maintain a right "to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures" and second, that "no warrant shall issue but upon probable cause."

This difference in punctuation cannot be ignored; it must mean *something*. *See State v. Short*, 851 N.W.2d 474, 500-01 (Iowa 2014) (noting that the Iowa Constitution uses a semicolon where the United States Constitution uses a comma and concluding that "the semicolon illustrates ... that in order to avoid being declared 'unreasonable' or unlawful, under [the Iowa Constitution], a warrant is ordinarily required.");

State v. Ochoa, 792 N.W.2d 260, 268-69 (Iowa 2010) (relying in part on the semicolon separating the warrant clause and the reasonableness clause in the Iowa Constitution to hold that "the Reasonableness Clause cannot be used to override the Warrant Clause," even though there was "no contemporaneous explanation of the use of the semicolon"). Accordingly, other states with the semicolon have construed their protections as broader than the federal baseline. See *In re Inspection of Titan Tire*, 637 N.W.2d 115, 125–26 (Iowa 2001).

Fourth, there are persuasive reasons beyond the text of Section 14, Article I for construing, interpreting, and applying its guarantee of probable cause to afford greater protection to Ohioans threatened with entry into their private homes for the purpose of general governmental searches. Those are discussed below.

For each of these reasons, this Court must not construe or apply the guarantee of "probable cause" as a dead letter by issuing a sweeping warrant solely on the bases that (1) an Ohio family's private home has not previously been invasively searched by the governmental entity seeking to conduct the search; and/or (2) the owner of the home abstained from expressly consenting to the search. Instead, this Court must acknowledged that "probable cause" means what it meant at the time Section 14, Article I was ratified: individualized suspicion of criminal conduct or other serious wrongdoing that threatens others.

ii. The Ohio Constitution's greater protection for property rights warrants protecting Defendant and its tenants from the invasive home intrusion that the City seeks to undertake here.

Governmental intrusion into Ohioans' homes, warrantless or otherwise, implicates *property* rights.[10] And because Ohio affords heightened protections for Ohioans' private property rights, and especially the right to exclude and those regarding private homes, the requirement of "probable cause" to issue a warrant enshrined in Section 14, Article I should be strictly construed to protect Ohioans' homes from sweeping generalized government searches.

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[10] With that said, the Ohio Supreme Court is clear that even an owner or operator of a business has a reasonable expectation of *privacy* in commercial property that "exists with respect to administrative inspections designed to enforce regulatory statutes." *City of Strongsville v. Patel,* 2005-Ohio-620, ¶¶ 7-8.

First, government searches implicate *property* rights, not just *privacy* rights. Law-enforcement officers conduct a "search" when they seek to obtain information in either of two ways: (1) by physically trespassing upon an individual's person, house, papers, or effects, *see United States v. Jones* , 565 U.S. 400, 406–07, 132 S.Ct. 945 (2012) (holding GPS tracking of a vehicle for twenty-eight days was a search when agents physically trespassed upon the vehicle to install the tracking device), *or* (2) by intruding upon an individual's reasonable expectation of privacy, *see Katz v. United States*, 389 U.S. 347, 360–62, 88 S.Ct. 507 (1967) (Harlan, J., concurring) (holding eavesdropping on a payphone conversation by means of an electronic listening and recording device, when the payphone door was closed, was a search; noting "reasonable expectations of privacy may be defeated by electronic as well as physical invasion"). The *Katz* reasonable-expectation-of-privacy test was *added to*, but not substituted for, the common-law trespassory test." *Jones*, supra. (Syllabus)(*Katz* added to the baseline the "expectations" test where no intrusion on property takes place, *Katz* "does not subtract anything from the Amendment's protections 'when the Government *does* engage in [a] physical intrusion of a constitutionally protected area"). Here, the City seeks to physically trespass upon CF Homes' house.

Second, the right to exclude others has always been revered by Ohio courts as a fundamental component of Ohioans' constitutionally-protected property rights. "One who owns or lawfully possesses or controls property will in all likelihood have a legitimate expectation of privacy by virtue of [the] right to exclude." (Emphasis added). *State v. Holland,* 2019-Ohio-2351, ¶ 41, 138 N.E.3d 658, 669, citing *People v. Mead*, 503 Mich. 205, 931 N.W.2d 557 (2019). This "right to exclude others" is "one of the most essential sticks in the bundle of rights that are commonly characterized as property." *State ex rel. New Wen, Inc. v. Marchbanks*, 2020-Ohio-63, 159 Ohio St. 3d 15, 22, citing Kades, *Property Rights and Economic Development*, 45 Wm. & Mary L.Rev. 815, 818 (2004) (noting that the bundle of sticks constitutes "'various combinations of the rights to exclude, to use, and to alienate'"); *Bresnick v. Beulah Park Ltd. Partnership* (1993), 67 Ohio St.3d 302, 303; *Eastwood Mall, Inc. v. Slanco,* 1994-Ohio-433, 68 Ohio St. 3d 221, 223–24,

626 N.E.2d 59, 61–62; *State v. Harris,* 2023-Ohio-1544, ¶ 17 ("[O]ne who owns or lawfully possesses or controls property will in all likelihood have a legitimate expectation of privacy by virtue of [the] right to exclude")

Third, the Ohio Constitution contains greater protection of private property rights than the United States Constitution. "One of the faults of the 1802 constitution identified by the drafters was that the earlier clauses were deemed insufficient to properly protect the private property rights," and "[a]s a result, in the revision, the drafters changed the placement and rewrote the property clauses." *Moore v. Middletown*, 2010-Ohio-2962, ¶¶ 66-67. Thus, "[h]istorically, the laws of Ohio were designed to ensure the right to own and protect property." *Id.*, at ¶ 66-67.

As a result, the Ohio Supreme Court recognizes an elevated sanctity of "the home—the place where ancestors toiled, where families were raised, where memories were made." *Norwood*, ¶ 4. This elevated sanctity arises from the extra protection the Ohio Constitution affords to "[t]he rights related to property, *i.e.,* to acquire, use, enjoy, and dispose of property," as "among the most revered in our law and traditions":

> To be * * * protected and * * * secure in the possession of [one's] property is a right inalienable, a right which a written constitution may recognize or declare, but which existed independently of and before such recognition, and which no government can destroy. * * * The fundamental principles set forth in the bill of rights in our constitution, declaring the inviolability of private property were evidently designed to protect the right of private property as one of the primary and original objects of civil society * * *." (Emphasis sic.) In light of these Lockean notions of property rights, it is not surprising that the founders of our state expressly incorporated individual property rights into the Ohio Constitution in terms that reinforced the sacrosanct nature of the individual's "inalienable" property rights, Section 1, Article I, which are to be held forever "inviolate."

Norwood, ¶ 34-35. Given the individual's fundamental property rights in Ohio, the courts' role in reviewing threats to those rights is "important in all cases." *Norwood,* ¶ 74, 110 Ohio St. 3d 353, 376–77. Thus, when reviewing "the state's intrusion onto the individual's right to garner, possess, and preserve property," Ohio courts must employ a heightened standard of review, rather than rubber-stamping the putative governmental intrusion. *Norwood,* ¶ 88; see also *Yoder v. City of Bowling Green, Ohio,* No. 3:17-cv-2321, 2019 WL 415254, at 4 (N.D. Ohio Feb. 1, 2019).

Here, the City's proposed warrant poses an intrusive affront to the rights of CF Homes and its tenants to preserve and protect their homes, and exclude others' trespasses thereon. See *Meier v. Sulhoff,* 360 N.W.2d 722, 726 (Iowa 1985)("While an administrative inspection aided by search warrant is not as great an intrusion in a constitutional sense as a warrantless entry upon show of credentials, it does encompass a right of forcible entry upon refusal to honor the warrant"). Accordingly, this heightened constitutional concern over Ohioans' property rights, and their homes in particular, provides an additional basis upon which to strictly scrutinize the "probable cause" the City relies upon in an attempt to intrude upon and within constitutionally-protected private homes.

iii. The Ohio Constitution's greater protections are especially warranted where, as here, federal constitutional guarantees have receded.

The Ohio Supreme Court is clear that the Ohio Constitution's longstanding guarantees should not be compromised simply because the United States Supreme Court may have withdrawn when enforcing tantamount provisions with in the federal constitution:

> If in the midst of current trends toward regimentation of persons and property, this long history of parallelism seems threatened by a narrowing federal interpretation of federal guaranties, it is well to remember that Ohio is a sovereign state and that the fundamental guaranties of the Ohio Bill of Rights have undiminished vitality. Decision here may be and is bottomed on those guaranties.[11]

There is considerable acknowledgement by Ohio courts of property rights' "heightened protection, as recognized in *Norwood,* and the United State Supreme Court's diminishing protection of private property rights." *Moore v. Middletown*, 2010-Ohio-2962, ¶¶ 68-69.

Likewise, the Supreme Court of the United States in *Camara v. Municipal Court* (1967), 387 U.S. 523, 87 S.Ct. 1727 bifurcated and relaxed the probable cause requirement of *the Fourth Amendment* with respect to what it deemed "administrative" warrants ("'probable cause' to issue a warrant to inspect must

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[11] *Direct Plumbing Supply v. City of Dayton* (1941), 138 Ohio St. 540, 38 N.E.2d 70, 137 A.L.R. 1058, citing *Wilson v. City of Zanesville*, supra; *Steele, Hopkins & Meredith Co. v. Miller*, 92 Ohio St. 115, 110 N.E. 648, at p. 651.

exist if reasonable legislative or administrative standards for conducting an *area* inspection are satisfied with respect to a particular dwelling"). Quite correctly, the Ohio Supreme Court has never followed suit with respect to Section 14, Article I of the Ohio Constitution, and this Court should apply *Direct Plumbing Supply* rather than *Camara.*

Doing so acknowledges that the type of warrant sought here is remarkably similar to general warrants and the writs of assistance. *State v. Jackson*, 742 N.W.2d 163, 169 (Minn. 2007) (explaining that provisions of the Fourth Amendment were adopted "in part [as] a reaction to the general warrants ... and the writs of assistance"). The problem with general warrants "is not that of intrusion *per se*, but of a general, exploratory rummaging in a person's belongings." *Andresen v. Maryland*, 427 U.S. 463, 480, 96 S.Ct. 2737 (1976). Like a general warrant, the search here would be "a general, exploratory rummaging in a person's belongings," *Coolidge v. New Hampshire*, 403 U.S. 443, 467, 91 S. Ct. 2022 (1971). The City has no idea what violations, if any, of city or state laws it might find in this home; it is simply seeking what amounts to a blanket authorization - - based on impermissible "bare suspicion," if even that - - to rummage through the home as part of his search for any code, statutory, or ordinance violations.

iv. The City's absence of constitutionally-requisite probable cause counsels rejection of the search warrant it seeks.

Here, the City has presented no pleadings, allegations, or evidence of a health or safety violation or concern at any of the dwellings, common areas, or curtilage located at 914 North Main Street, much less one that could justify searching every square inch of the home. Nor is there a "general" or "neutral" administrative plan pursuant to which the City proposed to proceed. Rather, the City maintains a *discriminatory* plan that exclusively *singles out* rental properties consisting of eight or less dwellings, while excluding both larger apartment buildings and owner-occupied homes.

Accordingly, the City's proposed searches are not "area searches" because they do not apply throughout a specific problematic or blighted area.[12] Nor are they uniform home searches, since they apply neither to all homes (owner-occupied homes are exempt), nor even to all rental homes (those who own greater than eight dwellings within the City are exempt). Consequently, this Court must deny the City's warrant application even under the minimal scrutiny required by Fourth Amendment jurisprudence.[13]

More importantly, the City's pleadings and attached allegations fail the constitutional standard for probable cause required to meet the guarantees of Section 14, Article I of the Ohio Constitution since 1851 and through the present date. The City's allegation that the Defendant's home has not previously been searched by the City constitutes probable cause *to believe that government has not previously been inside the home*, but not probable cause of any wrongdoing, threat to others, or even that a code violation *might* exist. Likewise, the mere fact that CF Homes members asserted their constitutional right to refuse, without more, may be probable cause *to believe that those members are principled or even disagreeable*, but that alone is not probable cause to believe that the members are harboring wrongdoing or a threat to another. Were it otherwise, the right to refuse consent would be eviscerated entirely.

Under the City's approach, obtaining an administrative search warrant to conduct the sweeping top-to-bottom search of every inch of an Ohio family's private home would be a mere formality, rather than the judicial check the Ohio Constitution requires.

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12 Numerous otherwise like-kind homes within the same area as the homes owned by CF Homes LLC are not subject to the City's inspection mandates, including some directly adjacent or virtually adjacent to our homes (for example, 115, 121, and 135 9th Street NE, 121 and 125 9th Street NW, 600, 613, and 618 Royer Ave. NW).

13 *See Wedgewood Vill. Pharmacy, Inc. v. United States*, 421 F.3d 263, 274 (3d Cir. 2005) ("the standard of probable cause required for an administrative warrant is less than required for a criminal warrant"). For an administrative warrant to issue, (1) there must be specific evidence of an existing violation, or (2) the search must be part of a general neutral administrative plan. *See Marshall v. Barlow's, Inc.*, 436 U.S. 307, 320-21, 98 S.Ct. 1816 (1978). Probable cause exists to issue a warrant based on specific evidence of an existing violation where the government proffers specific evidence providing "reasonable grounds to believe that such a violation" has occurred. *Id.* at 320, 98 S.Ct. 1816 n.16; *See United States v. Andrews*, 2021 WL 2400255, at 2 (D. Conn. June 11, 2021) ("probable cause standard is met where the government proffers specific evidence providing the magistrate 'reasonable grounds to believe a violation has occurred' "); *Eisenberg v. Wall*, 607 F. Supp. 2d 248, 254 (D. Mass. 2009) ("administrative warrants are justified where there is specific evidence of an existing violation of an administrative code or safety regulation"). Notably, the concessions made by some of the Justices in *Camara* applied solely to "area warrants," which, unlike here, applied equally to all homes with a blighted area.

Accordingly, CF Home is entitled to Judgment on the Pleadings, and the City's Warrant Application must be denied.

B. The City's Warrant Application impermissibly fails to join tenants who dwell within the homes it seeks to search.

Civ. R. 19 and Civ. R. 19.1 require dismissal of the City's Warrant Application unless the Ohio families rightfully occupying the homes the city seeks to search are joined. This is true for several reasons.

First, tenants clearly maintain the type of privacy and property interests contemplated by Civ. R. 19 with respect to whether a warrant is issued to search every square foot of their homes. *State v. Copley*, 2005-Ohio-896, ¶ 20 ("appellant continued to have rightful possession of the apartment during the time that law enforcement searched the property. Therefore, appellant has a 'legitimate expectation of privacy' in the apartment"). At least one tenant subject to the intrusive searches proposed here has made his objections known: 914 North Main resident James Daniska makes a compelling case that he should not be overlooked by the City in his Affidavit, affirming the following:

1. My apartment is my home, and I have lived there since 2016, longer than many people have lived in homes they own.

2. I opposed the City's rental inspection of my home and will not permit it, if I have a choice in the matter.

3. The City's rental inspection of each room in my apartment is an intrusive invasion of my privacy.

4. The City's rental inspection would be unnecessary, since my landlords maintains the property in which I reside in more than adequate condition.

5. I have no problems with the condition of the home I reside in; and when there are problems, I report them to my landlords and they promptly have them fixed.

6. I am a competent adult, and I do not need the City to "protect me" from my landlords, or from the condition of my home; if the home were in poor or dangerous condition, I could and would just rent somewhere else, from someone else, as there are plenty of rental options in the Canton area.

Second, courts to have considered the issues have repeatedly concurred that tenants are entitled to a seat at the table before a warrant may be issues to search their private homes. See, *inter alia*, *Singer v. City*

of Orange City, Iowa Case No. EQCV029175 (August 31, 2023)("a petition for an administrative search warrant should not be granted *ex parte*," and "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");[14] *City of Golden Valley v. Wiebesick*, 899 N.W.2d 152, 156–82 (Minn. 2017)("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").

Third, those who call 914 North Main Street their home will have no adequate remedy, were an improvident search warrant to be issued or executed in the absence of their notification and opportunity to be heard on the matter. For the same reasons, adjudication or issuance of a search warrant in their absences may prove highly prejudicial.

Finally, these tenants are easily-identifiable and small in number. Accordingly, there is no good cause or excuse for omitting them. And searching their homes while only informing their landlord treats these tenants as second-class citizens while simultaneously unduly enlisting the landlord to mediate between the tenants and the city.

Consequently, joinder of the residents of 914 North Main Street in North Canton is compulsory, such that the City's Warrant Application must be dismissed in their absence.

IV. CONCLUSION

For the foregoing reasons, CF Homes LLC is now entitled to Judgment on the Pleadings and/or cursory Summary Judgment.

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14 Available online at *https://ij.org/wp-content/uploads/2023/08/03841__EQCV029175_DDOT_598166.pdf.*

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing was served by email to Plaintiffs on this 28th day of September, 2023.

/s/ *Maurice A. Thompson*
Maurice A. Thompson