

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
Orlando Division

DEBRA LINDSAY, an individual;  
SAMANTHA MIATA, an individual;  
BRIAN ABERMAN, an individual;  
JACK ABERMAN, an individual; and  
GEA SEASIDE INVESTMENT, INC., a  
Florida Corporation;

Plaintiffs,

v.

CITY OF DAYTONA BEACH, a  
Municipal Corporation Organized and  
Existing under and by Virtue of the Laws  
of the State of Florida,

Defendant.

Case No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COMPLAINT**

**COME NOW** the Plaintiffs, DEBRA LINDSAY (“Ms. Lindsay”), SAMANTHA MIATA (“Ms. Miata”), BRIAN ABERMAN, JACK ABERMAN, and GEA SEASIDE INVESTMENT, INC. (“GEA”) (collectively, the “Plaintiffs”), by and through their undersigned Counsel, and hereby sue the Defendant, CITY OF DAYTONA BEACH (the “Defendant”), and would respectfully show this Honorable Court the following:

## **JURISDICTION AND VENUE**

1. This lawsuit is brought pursuant to Fourth and Fourteenth Amendments to the United States Constitution, and 42 U.S.C. §§ 1983 and 1988.

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3).

3. Venue in this judicial district and division is proper, pursuant to 28 U.S.C. § 1391(b) and M.D. Fla. Loc. R. 1.02. Mr. Aberman is a resident of this judicial district and division. GEA's principal place of business is located in this judicial district and division. Furthermore, all events giving rise to Plaintiffs' claims occurred in Daytona Beach, Florida, in this judicial district and division.

## **PARTIES**

4. Ms. Lindsay is an individual who resides in Daytona Beach, Florida. She resides in a residential rental property that is governed by Defendant's Ordinance 12-186.

5. Ms. Miata is an individual who resides in Daytona Beach, Florida. She resides in a residential rental property that is governed by Defendant's Ordinance 12-186.

6. Brian Aberman is an individual who resides in Daytona Beach, Florida.<sup>1</sup> He resides in a residential rental property that is governed by Defendant's Ordinance 12-186.

7. Jack Aberman is an owner of residential rental properties that are governed by Defendant's Ordinance 12-186.<sup>2</sup>

8. GEA is a for-profit corporation, organized under the laws of the State of Florida. GEA is an owner of residential rental properties that are governed by Defendant's Ordinance 12-186.

9. Defendant is a municipal corporation, organized and existing under and by virtue of the laws of the State of Florida, with the authority to enact and enforce ordinances, regulations and laws. At all times material hereto, Defendant acted under color of state law.

10. Plaintiffs demand a jury trial on all issues so triable.

### **GENERAL ALLEGATIONS**

11. On July 18, 2012, Defendant's City Commission adopted Ordinance 12-186, which was codified within Part II of Defendant's Code of Ordinances at Chapter 26, Article VI ("Ord. No. 12-186" or the "Ordinance"). A true and

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<sup>1</sup> Collectively, Ms. Lindsay, Ms. Miata, and Brian Aberman shall be referred to as "tenant-Plaintiffs".

<sup>2</sup> Collectively, Jack Aberman and GEA shall be referred to as "landlord-Plaintiffs".

accurate copy of Ord. No. 12-186 is attached hereto as Exhibit A and incorporated herein.

12. Ord. No. 12-186 applies “to all residential rental properties with one to four units located within the city [of Daytona Beach], and the owners of all such units and properties and their agents.” DAYTONA BEACH, FLA., CODE § 26-293.

13. The essence of Ord. No. 12-186 is that residential rental property owners must obtain a license from the Defendant before such owners may lease – or even offer to lease – their residential rental property to a tenant. *See* DAYTONA BEACH, FLA., CODE § 26-294(a) (“It shall be unlawful to rent or lease, or offer to rent or lease, any residential rental unit without a current residential rental license for the unit, a copy of which shall be posted or available at the residential rental property.”).

14. To obtain a residential rental license, Ord. No. 12-186 provides that a prospective landlord must complete a license application and permit Defendant’s agent or agents to complete an inspection of the residential rental property. *See* DAYTONA BEACH, FLA., CODE §§ 26-295, 26-296.

15. The license application requires a prospective landlord to provide the street address of the residential rental property; the number, type and sub-address of residential units located on the property; and the name, address, and phone number of the following individuals:

- a. The property owner or owners;
- b. The property owners' designated agent;
- c. The property owners' authorized repair and/or service person;  
and
- d. An individual "who can be contacted **24 hours a day, seven days a week**, regarding the residential rental unit."

DAYTONA BEACH, FLA., CODE § 26-295 (emphasis added).

16. Ord. No. 12-186 further provides that property owners "shall have a continuing obligation to notify the city in writing within 15 calendar days of any change in the information provided in the registration statement." *Id.* Failure to do so "shall be a violation of [Ord. No. 12-186]." *Id.*

17. Ord. No. 12-186 requires that prospective landlords pay an "initial application fee of \$40.00 and an annual license renewal fee of \$15.00." Additionally, Ord. No. 12-186 requires that prospective landlords pay "an initial inspection fee of \$50.00 per unit . . . and an annual inspection fee . . . of \$68.00 per unit." DAYTONA BEACH, FLA., CODE § 26-297.

18. Ord. No. 12-186 provides that, "[w]ithin 15 working days after receipt of a complete application . . . and the application fee, the city shall inspect the residential rental property and units to determine compliance with all applicable

provisions of the Land Development Code, including the property maintenance code . . .” DAYTONA BEACH, FLA., CODE § 26-296(a)<sup>3</sup>.

19. In addition to the requirement that residential rental properties be re-inspected every 24 months, Ord. No. 12-186 provides that “**any currently licensed unit or property may be inspected upon reasonable notice.**” DAYTONA BEACH, FLA., CODE § 26-296(c) (emphasis added). The Ordinance also provides that “[t]he property owner and agent shall permit the city to inspect all premises governed by this article to determine compliance, and shall fully cooperate with such inspections.” *Id.* The Ordinance imposes the further requirement on property owners or their agents to “notify tenants of planned inspections of their residential rental units”, mandating that such property owners or their agents “**shall make every effort to obtain the tenant’s written consent to entry for inspection purposes.**” *Id.* (emphasis added). However, the Ordinance does not require Defendant to obtain a search warrant if consent is withheld either by a property owner, his or her agent, or a tenant.

20. The Ordinance provides that “[f]ailure to comply with [the Ordinance] shall subject the licensee to suspension or revocation of the license, in addition to other remedies and penalties provided by law.” DAYTONA BEACH, FLA., CODE § 26-301(a).

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<sup>3</sup> Defendant’s “Land Development Code” is codified at DAYTONA BEACH, FLA., CODE at Appendix G.

21. The Ordinance provides a quasi-judicial framework whereby a “special magistrate”, appointed by Defendant’s City Commission, may decide to suspend or revoke a residential rental property license. *See* DAYTONA BEACH, FLA., CODE § 26-302.

22. Although the Ordinance provides that “the special magistrate shall explain the rules of procedure governing the hearing”, *see* DAYTONA BEACH, FLA., CODE § 26-302(2), the Ordinance does not actually specify what rules of procedure should govern a suspension or revocation hearing. Instead, the Ordinance vests the special magistrates with broad discretion to craft *ad hoc* standards. For example:

- a. **“The special magistrate shall decide all questions of procedure or standing.”**
- b. “Irrelevant or unduly repetitive testimony or evidence *may* be excluded.”
- c. **“To the maximum extent practicable**, the hearing shall be informal.”
- d. **“Reasonable** cross examination of witnesses shall be permitted...”
- e. “The special magistrate may call and question witnesses or request additional evidence **as he or she deems necessary and appropriate.**”

*See* DAYTONA BEACH, FLA., CODE § 26-302(a)(2) (emphasis added).

23. Importantly, the Ordinance does not specify a burden or standard of proof. Rather, the Ordinance ostensibly empowers the City Commission-appointed special magistrate to use his or her best discretion and judgment.

24. Upon suspension or revocation of a residential rental property license, the special magistrate has even broader discretion with regard to whether and how a license may be reinstated. The Ordinance merely provides that “[t]he special magistrate **may establish terms and conditions** from reinstatement of a license **after a period** of suspension or revocation . . .” *See* DAYTONA BEACH, FLA., CODE § 26-304 (emphasis added).

25. Defendant has vested the Daytona Beach Police Department with the responsibility and authority to enforce the Ordinance.

26. Defendant has attempted to enforce the Ordinance against all Plaintiffs, including the tenant-Plaintiffs at the homes where they reside and the landlord-Plaintiffs at both (a) properties that are rented to other tenants, and (b) properties that are vacant and advertised as available for rent.

27. Defendant’s Police Department employees have sent numerous, harassing letters to all Plaintiffs, complaining to both the tenant-Plaintiffs and the landlord-Plaintiffs about the residential rental properties having not been inspected, pursuant to the Ordinance.



28. Tenant-Plaintiffs are routinely startled by Defendant's Police Department employees, who closely inspect the exterior of Plaintiffs' homes by entering onto Plaintiffs' properties without consent and without a warrant. The tenant-Plaintiffs have been made to feel threatened by Defendant's Police Department for refusing to allow an interior inspection of their homes.

29. Plaintiffs have retained The Bonderud Law Firm, P.A. and agreed to pay a reasonable attorney fee for the prosecution of this lawsuit.

**COUNT I**  
**(Fourth Amendment – Unreasonable Search)**  
**(Facial Challenge to DAYTONA BEACH, FLA., CODE §§ 26-291, ET. SEQ.)**  
**42 U.S.C. §§ 1983, 1988**

30. Plaintiffs reallege and incorporate by reference paragraphs one (1) through twenty-nine (29) above, as though fully set forth herein.

31. The Ordinance violates the Fourth Amendment to the U.S. Constitution by authorizing warrantless searches of private homes.

32. The Ordinance violates the Fourth Amendment to the U.S. Constitution by authorizing searches of private homes without any reason whatsoever, but purely "upon reasonable notice".

33. The Ordinance violates the Fourth Amendment to the U.S. Constitution by forcing owners of residential rental property to "fully cooperate" with warrantless searches of their private real estate property, and by imposing sanctions upon such owners for failure to "fully cooperate".

34. The Ordinance violates the Fourth Amendment to the U.S. Constitution by forcing owners of residential rental properties to “make every effort” to induce their residential tenants to waive the tenants’ Fourth Amendment right to be free from unreasonable searches and seizures, and by imposing sanctions upon such owners for failure to so induce their tenants.

35. Defendant’s enforcement of the Ordinance has directly and proximately caused Plaintiffs damages, including but not limited to severe emotional distress and, with respect to the landlord-Plaintiffs, loss of rental income.

36. Under color of state law, Defendant has deprived Plaintiffs of their Fourth Amendment Right to be free from unreasonable searches and seizures, in violation of 42 U.S.C. § 1983.

**WHEREFORE**, Plaintiffs demand the following:

- (a) A declaration that the Ordinance violates the Fourth Amendment to the U.S. Constitution.
- (b) Preliminary and permanent injunctions, prohibiting the Ordinance’s enforcement.
- (c) An award of all available damages.
- (d) An award of reasonable attorneys fees and costs of suit, pursuant to 42 U.S.C. § 1988.

**COUNT II**  
**(Fourth Amendment – Unreasonable Search)**  
**(As-Applied Challenge to DAYTONA BEACH, FLA., CODE §§ 26-291, ET. SEQ.)**  
**42 U.S.C. §§ 1983, 1988**

37. Plaintiffs reallege and incorporate by reference paragraphs one (1) through twenty-nine (29) above, as though fully set forth herein.

38. Defendant's application of the Ordinance violates the Fourth Amendment to the U.S. Constitution by vesting law enforcement officers with the responsibility and authority to enforce the Ordinance.

39. Defendant's enforcement of the Ordinance has directly and proximately caused Plaintiffs damages, including but not limited to severe emotional distress and, with respect to the landlord-Plaintiffs, loss of rental income.

40. Under color of state law, Defendant has deprived Plaintiffs of their Fourth Amendment Right to be free from unreasonable searches and seizures, in violation of 42 U.S.C. § 1983.

**WHEREFORE**, Plaintiffs demand the following:

- (a) A declaration that the Ordinance violates the Fourth Amendment to the U.S. Constitution.
- (b) Preliminary and permanent injunctions, prohibiting the Ordinance's enforcement.
- (c) An award of all available damages.

(d) An award of reasonable attorneys fees and costs of suit, pursuant to 42 U.S.C. § 1988.

**COUNT III**  
**(Fourteenth Amendment – Due Process: Vagueness)**  
**(Facial Challenge to DAYTONA BEACH, FLA., CODE §§ 26-291, ET. SEQ.)**  
**42 U.S.C. §§ 1983, 1988**

41. Plaintiffs reallege and incorporate by reference paragraphs one (1) through twenty-nine (29) above, as though fully set forth herein.

42. For the reasons described in paragraphs nineteen (19) through twenty-four (24), *supra.*, the Ordinance violates the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, by virtue of the Ordinance’s vagueness. The language of the Ordinance encourages arbitrary and discriminatory enforcement of the Ordinance’s provisions, as well as those of the Land Development Code.

43. Defendant’s enforcement of the Ordinance has directly and proximately caused Plaintiffs damages, including but not limited to severe emotional distress and, for the landlord-Plaintiffs, loss of rental income.

44. Under color of state law, Defendant has deprived Plaintiffs of their Fourteenth Amendment Right to be free from enforcement of vague laws and regulations, in violation of 42 U.S.C. § 1983.

**WHEREFORE**, Plaintiffs demand the following:

(a) A declaration that the Ordinance violates the Fourteenth Amendment to the U.S. Constitution.

- (b) Preliminary and permanent injunctions, prohibiting the Ordinance's enforcement.
- (c) An award of all available damages.
- (d) An award of reasonable attorneys fees and costs of suit, pursuant to 42 U.S.C. § 1988.

**COUNT IV**  
**(Fourteenth Amendment – Equal Protection)**  
**(Facial Challenge to DAYTONA BEACH, FLA., CODE §§ 26-291, ET. SEQ.)**  
**42 U.S.C. §§ 1983, 1988**

45. Plaintiffs reallege and incorporate by reference paragraphs one (1) through twenty-nine (29) above, as though fully set forth herein.

46. The Ordinance violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, because there is no rational basis for imposing inspection requirements upon residential rental property owners and tenants, while not imposing inspection requirements upon owner-occupied residential property residents.

47. The Ordinance violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, because there is no rational basis for imposing 24/7 availability requirements upon residential rental property owners, while imposing no availability requirements upon owner-occupied residential property residents.

48. Defendant's enforcement of the Ordinance has directly and proximately caused Plaintiffs damages, including but not limited to severe emotional distress and, for the landlord-Plaintiffs, loss of rental income.

49. Under color of state law, Defendant has deprived Plaintiffs of their Fourteenth Amendment Right to equal protection under the law, in violation of 42 U.S.C. § 1983.

**WHEREFORE**, Plaintiffs demand the following: (a) A declaration that the Ordinance violates the Fourteenth Amendment to the U.S. Constitution; (b) Preliminary and permanent injunctions, prohibiting the Ordinance's enforcement; (c) An award of all available damages; and (d) An award of reasonable attorneys fees and costs of suit, pursuant to 42 U.S.C. § 1988.

Dated Tuesday, September 2, 2014.

**THE BONDERUD LAW FIRM, P.A.**

*/s/ Andrew Bonderud*

Andrew M. Bonderud, Esq.

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