

**IN UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ADAM PETERS, ELIZABETH
MATTERN, TINA HALL, GARY
GUESTO, and ROBERT KOHLER,

Plaintiffs,

v.

CITY OF WILKES-BARRE,

Defendant.

CIVIL ACTION No. _____

COMPLAINT

INTRODUCTION

The plaintiffs in this case – two tenants and three landlords – challenge the City of Wilkes-Barre’s enforcement of its so-called “One-Strike Ordinance” (the “Ordinance”), which authorizes city officials to unilaterally seize rental units when anyone is suspected of illegal activity involving drugs or guns on the premises, regardless of whether the tenant or landlord knew about the alleged illegal activity

or could reasonably have prevented it, and without any pre-deprivation due process or meaningful post-deprivation process.

The City of Wilkes-Barre used the Ordinance to summarily evict tenants – including Plaintiff Elizabeth Mattern and her four-year-old daughter and Plaintiff Tina Hall and her 17-year-old daughter – from their homes without any advance notice or due process simply because individuals who did not live in the units and were not on the leases were arrested for alleged crimes involving illegal drugs or guns. The city proceeded with unit closings even when the tenant had no knowledge of the alleged crimes of the third parties.

The City of Wilkes-Barre also deprived the plaintiff owners of rental properties closed under the Ordinance of any use of their properties for a period of six months based solely on the fact that individuals – some of whom were not on the lease and not known to be living in the properties – had been arrested for alleged crimes involving illegal drugs or guns. By its very terms, the Ordinance does not require property owners to have actual knowledge of any criminal activity occurring at the property and does not provide any kind of due process prior to closing the property.

Although the Ordinance provides a means for appeal, the City of Wilkes-Barre has failed to provide notice of this right to all landlords and tenants. When landlords and tenants have appealed, decisions were not issued for months,

effectively nullifying the few due-process protections offered by the Ordinance.

The One-Strike Ordinance violates plaintiffs' rights under the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 to seek damages for injuries suffered due to the City of Wilkes-Barre's unconstitutional enforcement of the One-Strike Ordinance and to enjoin further enforcement.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343.

2. Declaratory relief is authorized by 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57.

3. This Court has personal jurisdiction over the defendant because it is located in the Middle District of Pennsylvania.

4. Venue is proper in the Middle District of Pennsylvania pursuant to 28 U.S.C. § 1391(b) in that the defendant is subject to personal jurisdiction within the Middle District of Pennsylvania and the events that give rise to this action occurred within the Middle District of Pennsylvania.

PARTIES

5. Plaintiff Adam Peters is a resident of Red Hill, Pennsylvania. Mr. Peters owns a duplex located at 216 Carlisle Street in Wilkes-Barre, which he purchased

in 2010 to generate rental income.

6. Plaintiff Elizabeth Mattern is a resident of Wilkes-Barre, Pennsylvania.

Between September 1, 2010, and March 7, 2014, Ms. Mattern lived in a rental unit located at 516 North Main Street in Wilkes-Barre.

7. Plaintiff Tina Hall is a resident of Wilkes-Barre, Pennsylvania. Between September 1, 2012, and October 29, 2013, Ms. Hall lived in a rental unit at 117 Grove Street in Wilkes-Barre.

8. Plaintiff Gary Guesto is a resident of Wilkes-Barre, Pennsylvania. Mr. Guesto owns and manages four rental units in Wilkes-Barre, one of which is located at 189 Hazle Street.

9. Plaintiff Robert Kohler is a resident of Bethlehem, Pennsylvania. Mr. Kohler owns a rental unit located at 91 Custer Street in Wilkes-Barre.

10. Defendant City of Wilkes-Barre is a political subdivision located in Luzerne County, in the Commonwealth of Pennsylvania, with administrative offices located at 40 East Market Street, Wilkes-Barre, PA 18711.

FACTUAL BACKGROUND

The One-Strike Ordinance

11. At all relevant times, Wilkes-Barre has required property owners to obtain a certificate of occupancy for each property they desire to use or occupy and an occupancy license for each property they desire to rent to tenants.

12. The One-Strike Ordinance came into effect on September 1, 2013. *See* Wilkes-Barre Ordinance No. 12 of 2013 (adopted August 22, 2013), attached hereto as Exhibit “1.”

13. Under the Ordinance, a rental unit is closed for six months – and thus stripped of its certificate of occupancy and occupancy license – whenever a code-enforcement officer assigns a single “strike” to the property. Such closures bar all persons, including the landlord, from entering or using the property for any purpose during that period without express authorization from the City.

14. The One-Strike Ordinance permits a code-enforcement officer to issue a strike and close a rental unit where “[a]n occupant or owner has implied or actual knowledge of drug [or gun-related criminal] activity... in the rental unit, common areas or on the premises or property.” *See* Exhibit “1.” The requirement of “implied or actual knowledge” is met if “the owner and/or occupant is charged [with] or convicted” of certain qualifying crimes. Such knowledge can also be imputed to the occupant or owner “based on police knowledge and experience of drug [or gun-related criminal] activity on the property.” *Id.*

15. The One-Strike Ordinance vests a code-enforcement officer with the sole discretion to decide when the above criteria for closure are satisfied. There is no requirement that code-enforcement officers make any allegation or provide any evidence that the owner or occupant knew or should have known about illegal drug

or gun activity at the property prior to closure. Moreover, the Ordinance does not provide any defense to owners or occupants based on lack of knowledge.

16. The One-Strike Ordinance provides no opportunity for tenants or landlords to contest the code-enforcement officer's decision prior to closing a rental unit.

17. The Ordinance also lacks any provision requiring that advanced notice, or any notice at all, be provided to landlords or tenants regarding the closure of a rental unit.

18. Although the Ordinance provides an appeal process for "[a]ny person aggrieved by" a closure order, it imposes a \$100 non-refundable appeal fee and requires appeals to be filed within 20 days of the closure order. *See* Exhibit "1."

19. Appeals are heard by the "Housing Appeals Board," which was established solely for enforcement of the One-Strike Ordinance.

The Closures

Plaintiff Adam Peters – Closure of Carlisle Street Property

20. Plaintiff Adam Peters, 28, owns a small trucking business, Peters Produce Trucking, Inc., of which he is the sole employee.

21. He also owns two rental units in Wilkes-Barre, including a rental unit located at 216 Carlisle Street, Apartment 2 (the "Carlisle Street Property").

22. Mr. Peters purchased the Carlisle Street Property in September 2010 and spent approximately \$15,000 renovating it.

23. On or about the month of February 2011, Mr. Peters was notified by the Carlisle Street Property's first floor tenant that there was an unusual amount of foot traffic into and out of the second floor rental unit. Mr. Peters contacted the Wilkes-Barre police department about the suspicious activity.

24. Mr. Peters never heard from police again and no action was taken.

25. A month later, the tenant abandoned the Property, leaving the unit dirty and its appliances destroyed.

26. On March 1, 2013, Mr. Peters rented the Carlisle Street Property to Lateesha Lundy. Mr. Peters conducted two background checks on Ms. Lundy and both came back clean. Mr. Peters also verified Ms. Lundy's employment as a certified nursing assistant.

27. Until September 13, 2013, Mr. Peters never received any calls or complaints concerning the Carlisle Street Property or Ms. Lundy and had no reason whatsoever to believe that illegal activity had occurred, was occurring, or would occur in the future there.

28. On September 13, 2013, police entered the Carlisle Street Property and arrested Patrick Miller for drug-related offenses.

29. Mr. Miller was Ms. Lundy's boyfriend, but he was not on the lease and, as far as Mr. Peters knew, did not live at the Carlisle Street Property.

30. On that same day, Mr. Peters received a frantic call from a tenant in a neighboring rental unit. The woman said the police had broken down the rental structure's common door and raided the Carlisle Street Property.

31. Mr. Peters called his property manager, Frankie Rudis, and asked him to investigate the incident. At approximately 11 a.m., Mr. Rudis arrived at the Carlisle Street Property. Once inside, Mr. Rudis encountered Wilkes-Barre Code Enforcement Officer Frank Kratz.

32. Mr. Kratz spoke with Mr. Peters by phone and asked if he, Mr. Kratz, could inspect the Carlisle Street Property. Mr. Peters consented.

33. After the inspection, Mr. Kratz said he was closing the Carlisle Street Property because it was missing smoke detectors.

34. Later in the afternoon, Mr. Kratz returned to the property, along with a number of media members and Wilkes-Barre officials, including Mayor Thomas Leighton and Police Chief Gerard Dessoie. Upon arrival, Mr. Kratz posted a notice of closure on the front door of the Carlisle Street Property.

35. The closure notice posted by Mr. Kratz made no mention of any violations related to missing smoke detectors. The notice stated that the closure, which was effective immediately, was based on the One-Strike Ordinance. *See* Notice of Closure for Carlisle Street Property, attached hereto as Exhibit "2."

36. At or about that time, Mayor Thomas Leighton held a press conference on the front porch of the Carlisle Street Property, lauding the first closure under the newly passed One-Strike Ordinance. Mayor Leighton remarked that he wanted “our residents, our good residents, to know that we’re cracking down on the landlords that are bringing filth and dirt and crime into our city” and that “[w]e’re going to hit these landlords that don’t care about the city of Wilkes-Barre.”

37. That same day, Assistant City Attorney William Vinsko mailed Mr. Peters a letter notifying him of the closure under the drug-activity portion of the One-Strike Ordinance. *See* Assistant City Attorney Vinsko’s Letter to Mr. Peters, attached hereto as Exhibit “3.” The letter stated that Mr. Peters had a right to appeal the closure within twenty days. *Id.*

38. Mr. Peters paid the \$100 non-refundable fee and filed a petition to appeal the closure of the Carlisle Street Property.

39. On November 19, 2013, Mr. Peters and his attorney John Bradley appeared before the Housing Appeals Board.

40. Mr. Vinsko, who appeared on behalf of the City of Wilkes-Barre, called Officer Kratz to testify. Officer Kratz said that he initially closed the property because it was missing smoke detectors. He testified that, later in the day, he received a “directive” from his supervisor, Wilkes-Barre Director of Operations

Attilio Frati, to return to the property and post a notice closing the Carlisle Street Property pursuant to the One-Strike Ordinance.

41. The Housing Appeals Board voted to uphold “the action of the Code Enforcement [officer] of the City.”

42. Mr. Peters did not receive written notice of the Housing Appeals Board’s decision until April 24, 2014, more than a month after the six-month closure expired. *See* Appeal Decision Letter, attached hereto as Exhibit “4.”

43. From the date of the closure of the Carlisle Street Property to the date of its re-opening on March 13, 2014, Mr. Peters was not permitted to rent the Carlisle Street Property or even to enter it.

44. As a result, Mr. Peters suffered \$3,750 in lost rental income.

45. Mr. Peters also paid approximately \$2,600 in attorney’s fees to prepare for the November 19, 2013, appeal hearing.

46. Mr. Peters’ reputation has also suffered as a result of the City’s publicizing the closure of his property and Mayor Leighton’s comments to the press about “landlords that are bringing filth and dirt and crime into our city.”

Plaintiff Elizabeth Mattern – Closure of Main Street Property

47. Plaintiff Elizabeth Mattern is a 31-year-old, single mother with no criminal record. She has a four-year-old daughter.

48. Ms. Mattern is a licensed hair stylist and has worked at the same salon for 11 years.

49. Ms. Mattern has lived in Wilkes-Barre for 12 years, since she was 19 years old, and intends to continue living in Wilkes-Barre.

50. Between September 1, 2010, and March 7, 2014, Ms. Mattern lived with her daughter in a rental unit located at 516 North Main Street (the “Main Street Property”) in Wilkes-Barre.

51. At no time during that period did Ms. Mattern commit any violation of the Wilkes-Barre Code of Ordinances. Nor was she ever contacted by police or code-enforcement officers about any problems on the property.

52. In the months before the events on March 7, 2014, Ms. Mattern had attempted to reestablish a relationship between her daughter and the child’s father, Denver Pearson. Ms. Mattern and Mr. Pearson had separated shortly after Ms. Mattern became pregnant, and Mr. Pearson had not played a role in the child’s upbringing. Believing it was important that her daughter know Mr. Pearson, Ms. Mattern had started to let him visit the child.

53. Ms. Mattern was aware that Mr. Pearson had recently experienced legal difficulty related to an outstanding warrant, but Mr. Pearson told her that the situation was under control and that he was out on bail, and Ms. Mattern had no

reason to believe Mr. Pearson would engage in any unlawful activity at the Main Street Property.

54. On the morning of March 7, 2014, Ms. Mattern received a call from Mr. Pearson. He said he had had an argument with his girlfriend, with whom he lived, and needed a place to go. Ms. Mattern agreed to let Mr. Pearson stay at her apartment for a few hours while she was at work.

55. At approximately 7:30 a.m., Ms. Mattern drove her daughter to daycare and herself to the salon for work.

56. At approximately 3 p.m., Ms. Mattern left the salon, picked up her daughter from daycare and her mother from work, and drove to her mother's house. After eating dinner there, Ms. Mattern departed for home.

57. When Ms. Mattern returned to the Main Street Property at approximately 9 p.m., she noticed the lights in her apartment were on. She looked through a window and immediately knew something was wrong. Her belongings were scattered across the bed. Furniture was overturned. Drawers had been removed from the dresser and left on the floor.

58. Ms. Mattern rushed to her front door and saw a large blue notice taped there.

59. The notice was dated March 7, 2014, and stated that the Main Street Property was "hereby ordered **closed** by the City of Wilkes-Barre Office of Code

Enforcement until 9/7/2014 pursuant to” the One-Strike Ordinance. The notice also stated that “[f]urther, all rental licenses [had] been **revoked**” and that “anyone caught entering this unit shall be prosecuted.” *See* Posted Notice of Closure for Main Street Property, attached hereto as Exhibit “5.”

60. Shocked and confused, Ms. Mattern entered her home and surveyed the damage. She called her property manager, but the property manager had no information about the closure and told Ms. Mattern to talk to her neighbor.

61. Ms. Mattern went to her neighbor’s apartment and asked what had happened. The neighbor informed Ms. Mattern that, while the neighbor had been away from her apartment, police had raided the entire building and Mr. Pearson had fled Ms. Mattern’s apartment, kicked in the neighbor’s door, and hid in a closet. The police eventually found Mr. Pearson hiding there and arrested him.

62. The police told the neighbor that Mr. Pearson was wanted on a warrant and that, at the time of his arrest, they found a small quantity of drugs in his pocket and two scales that he had hidden in Ms. Mattern’s apartment.

63. After the conversation with her neighbor, Ms. Mattern returned to her apartment. While Ms. Mattern was inside, three police officers arrived. One of the officers informed Ms. Mattern that she was not supposed to be in her apartment. He told her she had ten minutes to retrieve clothes and leave.

64. While Ms. Mattern began to gather her belongings, the police officer received a radio call. After a short conversation, the officer turned to Ms. Mattern and said she was under arrest.

65. The officer told Ms. Mattern to put her hands behind her back and handcuffed her.

66. At approximately 9:45 p.m., the officers drove Ms. Mattern to the Wilkes-Barre police station.

67. At the station, Ms. Mattern was fingerprinted, photographed, and placed in a cell. At approximately midnight, Ms. Mattern was released from custody without any explanation from the officers.

68. Ms. Mattern has never been contacted by the police since that night. She did not receive a citation and was not charged with any crime.

69. In the weeks after the closure, Ms. Mattern's father and property manager communicated by phone with Assistant City Attorney Vinsko. During these conversations, Mr. Vinsko indicated that the City would look into lifting the closure order on the Main Street Property.

70. After approximately two weeks of conversations, however, Mr. Vinsko contacted Ms. Mattern's property manager and informed her that the City would keep the Main Street Property closed.

71. Ms. Mattern wrote Mr. Vinsko a letter, pleading with him to reconsider the closure of the Main Street Property.

72. Ms. Mattern explained that Mr. Pearson did not live in the unit and that she was unaware that he had any ongoing legal issues.

73. Ms. Mattern wrote that, since the eviction, she was having difficulty securing housing for her and her daughter because her income was too high to qualify for public housing but too low to afford anything suitable.

74. She concluded her letter by stating that her “little girl wants to go home, the only home she’s ever known, and so do I.”

75. Ms. Mattern never received a reply to her letter, nor any information regarding her right to appeal, and the Main Street Property remained closed for the full six-month period.

76. During the closure, the vacant apartment was broken into, and personal property valued at approximately \$1600 was stolen from Ms. Mattern’s apartment.

77. In the weeks following the closure, Ms. Mattern and her daughter lived with Ms. Mattern’s mother. Because of the additional distance to Ms. Mattern’s workplace, Ms. Mattern incurred an extra \$100 per week in travel expenses.

78. Ms. Mattern rented a new apartment in Wilkes-Barre on March 27, 2014. Ms. Mattern had to pay movers \$300 to relocate her possessions.

79. The new rental unit costs Ms. Mattern \$25 more per month than the Main Street Property.

Plaintiff Tina Hall – Closure of Grove Street Property

80. Plaintiff Tina Hall is a 54-year-old grandmother. Her 17-year-old daughter lives with her.

81. Ms. Hall has been unemployed for several years because of a degenerative hearing condition that has left her legally deaf. She receives disability payments.

82. Ms. Hall has lived in Wilkes-Barre for four years and intends to continue living in Wilkes-Barre.

83. Between September 1, 2012 and October 29, 2013, Ms. Hall lived in a rental unit located at 117 Grove Street (the “Grove Street Property”) in Wilkes-Barre, along with her daughter. Until October 3, 2013, Ms. Hall’s son, Jamel Hall, also lived there.

84. At no time during that period did Ms. Hall commit any violation of the Wilkes-Barre Code of Ordinances. Nor was she ever contacted by police or code-enforcement officers about any problems on the property.

85. On October 3, 2013, Ms. Hall and her landlord went to the Wilkes-Barre Housing Authority to remove Ms. Hall’s son, Jamel, from the lease for the Grove Street Property. Jamel had recently found a job in Hazelton and moved there to live in an apartment with his sister.

86. On October 28, 2013, Ms. Hall allowed Jamel to stay overnight at the Grove Street Property because he had a meeting the next day with his parole officer in Scranton.

87. The morning of October 29, 2013, Jamel left the Grove Street Property for his meeting.

88. At approximately 11 a.m., Jamel's parole officer, David Ruzicki, knocked on Ms. Hall's door and asked if he could come inside.

89. Once inside, Officer Ruzicki said he needed to search the Grove Street Property because he had discovered photographs of a firearm on Jamel's phone. Officer Ruzicki stated that he had a right to search the Grove Street Property because it was still listed as Jamel's address.

90. Officer Ruzicki called Wilkes-Barre Police for assistance. Within an hour, multiple officers arrived at the Grove Street Property.

91. An officer ordered Ms. Hall to sit while police conducted a search of the premises. During the search, the officers damaged picture frames and broke decorative figurines.

92. Eventually, officers discovered a firearm wrapped in plastic hidden in the bedroom.

93. Ms. Hall told officers she had no knowledge of the firearm, but the officers handcuffed her and told her she was under arrest for unlawful possession of a firearm and receipt of stolen property.

94. At approximately 6 p.m., Ms. Hall's landlord received a phone call from Wilkes-Barre Assistant Director of Operations Michael Simonson. Mr. Simonson told the landlord that code-enforcement officers had closed the Grove Street Property under the One-Strike Ordinance. Mr. Simonson said that Ms. Hall would be permitted to retrieve her belongings during daylight hours but otherwise no one was authorized to enter the Grove Street Property for six months.

95. With the Grove Street Property closed, Ms. Hall and her daughter moved in with Ms. Hall's 31-year-old daughter and one-year-old grandchild in a small rental unit in Wilkes-Barre. The rental unit was not made to accommodate four people, but Ms. Hall and her minor daughter had nowhere else to stay.

96. On October 30, 2013, Mr. Vinsko mailed a letter to Ms. Hall's landlord. *See* Assistant City Attorney Vinsko's Letter, attached hereto as Exhibit "6." The letter stated that the Grove Street Property "was recently the subject of [sic] an arrest related to gun activity on October 29, 2013," and that, pursuant to Section 7-239(d)(1)(f)(vii) of the Wilkes-Barre Code of Ordinances, code-enforcement officials had closed the Grove Street Property. Mr. Vinsko wrote that "[a]ll rental licenses are formally revoked" and that "[n]o parties, individuals and/or entities are

permitted to enter the said unit [sic] unless permitted directly by the Office of Code Enforcement.” *Id.* The letter informed the landlord that he had “a right to appeal this determination by the Office of Code Enforcement” within 20 days. *Id.*

97. The next day Ms. Hall’s landlord paid a \$100 non-refundable fee and filed an appeal. In his filing, the landlord wrote that the gun found in the Grove Street Property belonged to Ms. Hall’s son, Jamel, and that Jamel had moved out on October 3, 2013. The landlord asked for the City “to be lenient” because Ms. Hall and her daughter had nowhere else to live.

98. On December 2, 2013, Ms. Hall’s landlord received a letter from the Housing Appeals Board stating that a hearing had been scheduled for December 12, 2013.

99. On December 12, 2013, Ms. Hall and her landlord appeared before the Housing Appeals Board. Ms. Hall explained that her son had hidden the firearm at the Grove Street Property without her knowledge and that he was not living there at the time of the incident. She pleaded with the Board to allow her and her daughter to return home.

100. One board member asked Mr. Vinsko, who represented the City of Wilkes-Barre at the hearing, if the City was willing to “drop” the closure. Mr. Vinsko replied that the City would not drop the closure and that this incident was

exactly what the Ordinance was for, even if the one who commits the act is a visitor.

101. The Board issued no decision to Ms. Hall or her landlord at the hearing.

102. While Ms. Hall and her landlord awaited the Board's decision, the charges against Ms. Hall were nolle prossed.

103. On April 24, 2014, a mere six days before the six-month closure was due to expire, the City of Wilkes-Barre mailed a letter to Ms. Hall's landlord informing him that "on December 12, 2013, the City of Wilkes-Barre Housing Appeals Board rendered a decision wherein they found you in violation of" the One-Strike Ordinance and "upheld the Order of the City of Wilkes-Barre Code Enforcement Officer." *See* Appeal Decision Letter, attached hereto as Exhibit "7."

Plaintiff Gary Guesto – Closure of Hazle Street Property

104. Plaintiff Gary Guesto has lived in Wilkes-Barre for 55 years, since he was 10 years old, and plans to live in Wilkes-Barre for the rest of his life.

105. Mr. Guesto served as a firefighter in Wilkes-Barre for more than 20 years before retiring in 2000.

106. Mr. Guesto currently volunteers as the director of a youth softball league.

107. Mr. Guesto owns and manages four rental units in Wilkes-Barre, including a rental unit located at 189 Hazle Street (the “Hazle Street Property”).

108. Between October 1, 2012, and February 24, 2014, Mr. Guesto rented the Hazle Street Property to a 41-year-old woman named Ada Wells, who has a disability.

109. As was his custom, Mr. Guesto personally collected rent from Ms. Wells every month and checked on the state of the unit.

110. When Mr. Guesto visited the Hazle Street Property, Ms. Wells would invite him inside for tea, and he always found the apartment to be clean and neat. Mr. Guesto occasionally made repairs inside the home and never noticed anything indicating illegal activity.

111. Until February 24, 2014, Mr. Guesto never received any calls or complaints concerning the Hazle Street Property or Ms. Wells. Mr. Guesto had no reason whatsoever to believe that illegal activity had occurred, was occurring, or would occur in the future at the Hazle Street Property.

112. On February 24, 2014, at approximately 1 p.m., Mr. Guesto received a call from a neighboring tenant alerting him that police were at the Hazle Street Property.

113. Mr. Guesto immediately drove to the Hazle Street Property to investigate. When he arrived, Mr. Guesto saw three police cars parked outside, as well as several officers dressed in tactical gear.

114. As Mr. Guesto approached the Hazle Street Property, a police officer told Mr. Guesto that Ms. Wells and her boyfriend had been arrested for drug-related offenses and that the rental unit was being searched.

115. When a closure notice was posted on the Hazle Street Property, Mr. Guesto asked what was happening. Mr. Simonson instructed Mr. Guesto to read the notice.

116. Mr. Guesto never received any letter notifying him of the closure or his right to appeal. Indeed, the City has confirmed that no letters were ever sent to Mr. Guesto.

117. Because of serious health issues, Mr. Guesto was unable to investigate the closure further until two months later. At that time, he went to City Hall and asked if there was any way he could appeal the closure. Mr. Guesto was informed that the 20-day deadline for appeal had passed.

118. From the date of the closure of the Hazle Street Property to the date of its re-opening on August 24, 2014, Mr. Guesto was not permitted to rent the Hazle Street Property nor even enter it except to clean out rotting food.

119. As a result, Mr. Guesto suffered \$3,900 in lost income.

Plaintiff Robert Kohler – Closure of Custer Street Property

120. Plaintiff Robert Kohler resides in Bethlehem, Pennsylvania.

121. Mr. Kohler owns 10 rental properties in Wilkes-Barre, including a rental unit located at 91 Custer Street (the “Custer Street Property”).

122. Mr. Kohler employs a property-management company located in Wilkes-Barre to manage his rental properties.

123. On approximately August 1, 2013, Mr. Kohler rented the Custer Street Property to Natasha Golomb and Derrick Harold.

124. Mike Griffith, an employee of Mr. Kohler’s property management company, performed background and credit checks on both tenants, neither of which revealed any concerning information.

125. In January 2014, Mr. Harold was removed from the lease.

126. In February 2014, Mr. Griffith visited the Custer Street Property to collect rent.

127. Mr. Griffith looked around the first floor of the Custer Street Property, which appeared clean and undamaged.

128. On March 20, 2014, Mr. Griffith received a call from a resident who lived near the Custer Street Property informing him that the front door to the house was broken and that a notice had been posted on the door.

129. The next day, Mr. Kohler received a letter from Assistant City Solicitor Vinsko informing him that the Custer Street Property “was recently the subject of an arrest related to both drug and gun activity on March 19, 2014, following a search involving the Wilkes-Barre Police Department.” *See* Assistant City Attorney Vinsko’s Letter to B&L Investment Properties, LLC, attached hereto as Exhibit “8.”

130. Prior to receiving the March 19, 2014, letter, neither Mr. Kohler nor Mr. Griffith was aware of any drugs or illegal firearms at the Custer Street Property.

131. Mr. Griffith contacted Mr. Vinsko to ask how to lift the closure order. Mr. Vinsko stated that the only option was to file an appeal.

132. Mr. Kohler paid the \$100 non-refundable appeal fee and filed a petition to appeal the closure of the Custer Street Property.

133. The Housing Appeals Board scheduled an appeal hearing for May 22, 2014.

134. The hearing date was postponed three times: Once because the board lacked a quorum, another time because Mr. Vinsko was unavailable, and once because Mr. Kohler’s attorney was unavailable.

135. The appeal hearing took place on July 17, 2014.

136. Mr. Kohler paid an attorney, Joe Albert, \$1,400 to represent him in the appeal.

137. The Housing Appeals Board sent its decision rejecting Mr. Kohler's appeal on July 23, 2014, four months after the Custer Street Property was closed.

138. Although the closure order expired on September 19, 2014, Mr. Kohler has been unable to rent the Custer Street Property.

139. From the date of the closure of the Custer Street Property to the date of its re-opening on September 19, 2014, Mr. Kohler was not permitted to rent the Custer Street Property, or even to enter it.

140. As a result of the mandatory closure, Mr. Kohler suffered \$725 per month in lost rental income.

141. Mr. Kohler has also had to pay \$226 for maintenance and approximately \$72 per month for utilities, costs that would have been borne by the tenant if the Custer Street Property were occupied.

DEFENDANT'S ACTIONS UNLAWFULLY HARMED PLAINTIFFS

142. Plaintiffs have suffered injury as a result of the defendant's actions, including but not limited to, financial injury, emotional and psychological pain and suffering, and injury to their reputations.

143. Absent injunctive and declaratory relief, plaintiff occupants face an ongoing threat that the City will evict them from their homes because of the

alleged misconduct of third parties. Likewise, plaintiff landlords face an ongoing threat that the City will deprive them of the use of their properties because of the alleged misconduct of third parties.

CAUSES OF ACTION

Count I – Unlawful Seizure (U.S. const. amend. IV) (All Plaintiffs against Defendant)

144. Plaintiffs incorporate by reference the allegations in the preceding paragraphs as though set forth at length herein.

145. The Fourth Amendment to the United States Constitution guarantees individuals the right to be “secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”

146. Under the Fourth Amendment, a seizure of property occurs if there is some meaningful interference with an individual’s possessory interest in that property.

147. Tenants have possessory interests in their leaseholds.

148. Landlords have possessory interests in the properties they own.

149. Defendant City of Wilkes-Barre, through its enactment and enforcement of the One-Strike Ordinance, unreasonably and meaningfully interfered with the property interests of the plaintiffs by summarily evicting the tenant plaintiffs and depriving the landlord plaintiffs of all use of their properties.

150. Accordingly, the Ordinance violates the Fourth Amendment.

**Count II – Excessive Fine
(U.S. Const. amend. VIII)
(Plaintiffs Peters, Guesto, and Kohler against Defendant)**

151. Plaintiffs incorporate by reference the allegations in the preceding paragraphs as though set forth at length herein.

152. The Excessive Fines Clause of the Eighth Amendment to the United States Constitution bars the government from extracting payment, whether in cash or in kind, as punishment for an offense where doing so would be “excessive.”

153. Defendant’s closures of plaintiffs’ properties under the One-Strike Ordinance were fines, because such temporary forfeitures, which extract payment in kind, were punitive. Enforcement of the One-Strike Ordinance was directed against plaintiffs, was tied to alleged criminal acts, was intended as punishment, and forfeited properties that were not instrumentalities of crime.

154. Moreover, the fines imposed by the defendant were excessive, because such fines were grossly disproportional to plaintiffs’ culpability. Enforcement of the One-Strike Ordinance imposed punishment on plaintiffs without any allegation, much less proof, that plaintiffs participated in, knew of, or had reason to know of the alleged illegal activity on their property. Therefore, plaintiffs had no culpability, and any fine was categorically excessive.

155. Accordingly, the One-Strike Ordinance violated and continues to violate the Excessive Fines Clause of the Eighth Amendment.

**Count III – Procedural Due Process
(U.S. Const. amend. XIV)
(All Plaintiffs against Defendant)**

156. Plaintiffs incorporate by reference the allegations in the preceding paragraphs as though set forth at length herein.

157. The Fourteenth Amendment to the United States Constitution provides that no person shall be deprived of life, liberty, or property without due process of law.

158. Enforcement of the One-Strike Ordinance deprived plaintiff tenants of their protected interests in their leaseholds and plaintiff landlords of their protected interests in their rental properties without adequate procedural protections.

159. The One-Strike Ordinance provides no notice or hearing before the closure of plaintiffs' properties.

160. The post-deprivation procedures provided to plaintiffs are inadequate to protect against the deprivation of plaintiffs' property interests.

161. Accordingly, the One-Strike Ordinance violates the Fourteenth Amendment's Procedural Due Process Clause.

PRAYER FOR RELIEF

162. WHEREFORE, Plaintiffs respectfully request the following:
- a. a declaratory judgment pursuant to 28 U.S.C. § 2201 & 2202 and 42 U.S.C. § 1983 declaring that the One-Strike Ordinance, codified at Sections 7-239(d)(1)(f)(vii) & (viii) of the Wilkes-Barre Code of Ordinances and enacted pursuant to Ordinance No. 12 of 2013, violates the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution;
 - b. an injunction prohibiting enforcement of the One-Strike Ordinance, codified at Sections 7-239(d)(1)(f)(vii) & (viii) of the Wilkes-Barre Code of Ordinances and enacted pursuant to Ordinance No. 12 of 2013;
 - c. damages against defendant for violating plaintiffs' rights under the United States Constitution by enforcing the One-Strike Ordinance against plaintiffs;
 - d. an order awarding plaintiffs the costs incurred in this litigation, including attorneys' fees pursuant to 42 U.S.C. § 1988; and
 - e. such other relief as the Court deems just and proper.

Dated: January 22, 2015

Respectfully submitted,

/s/ David R. Fine

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