



June 17, 2015

BY EMAIL

Mayor Diane Hanson
Town of Dewey Beach
105 Rodney Avenue
Dewey Beach, DE 19971

Re: Town Ordinance No. 423

Dear Mayor Hanson:

We have received a complaint about Town Ordinance No. 423 and the language that is included in rental license applications as a result of that ordinance. I am writing to request that you take action to have the ordinance repealed because it violates the Fourth Amendment of the United States Constitution and is unconstitutional in two respects.

The ordinance is embodied in the rental license application through language that states:

Upon presentation of proper credentials and/or upon written notice to the record title owner of a premises of a time and date for inspection to determine compliance of construction or the existing premises with the provisions of the Dewey Beach licensing regulations, zoning provisions or building requirements of the Dewey Beach Code or the Sussex County Housing Code, the Building Official or a duly authorized representative may enter at reasonable times any building, structure or premises within the Town limits to perform any duty imposed upon the Building Official by this code.

This violates the law that prohibits the government from entering and inspecting property without obtaining either the voluntary consent of the resident or a warrant issued by a judge. That limitation on government power was recognized by the United States Supreme Court in 1967 in Camara v. Municipal Court, 387 U.S. 523, a case that dealt with housing inspections.

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In addition, because the Dewey Beach requirement appears in a rental application, enforcing it would violate the law providing that only the resident, not the owner or landlord, may grant consent for a search. See the U.S. Supreme Court decision in Chapman v. United States, 365 U.S. 610, 616-17 (1961).

Dewey Beach should not be violating the law. Please confirm that you will act to have the ordinance repealed and the rental license application changed.

Sincerely yours,



Richard H. Morse

cc: ftwonsend@schmittrod.com