

October 27, 2006



ROSNER  
&  
MANSFIELD, LLP

Jeffrey Epp, City Attorney  
City of Escondido  
Escondido City Hall  
201 North Broadway  
Escondido, CA 92025-2798

Re: Adoption of Escondido Ordinance 2006-38R

Dear Mr. Epp:

Despite strong opposition from numerous members of the community, on October 18, 2006, the City of Escondido adopted Ordinance No. 2006-38 R (the "Ordinance"). The Ordinance seeks to ban renting an apartment to, or otherwise "harboring" any person "not lawfully present" in the United States. The Ordinance was apparently patterned after portions of a similar law adopted by Hazelton, Pennsylvania, which is being challenged in a federal lawsuit on several constitutional grounds. In addition, ACLU Immigrants' Rights Project, MALDEF, and other groups have obtained a temporary restraining order against a similar law passed in Valley Park, Missouri.

As we advised the City, in writing and in person, before the Ordinance was approved, the Ordinance is riddled with constitutional flaws and statutory violations. This letter briefly describes some of those issues, without waiving the right to raise any other issues in subsequent legal action.

1. Federal Preemption: Federal immigration law directly addresses the so-called "harboring" of undocumented persons. 8 U.S.C. § 1324(a). Therefore, federal law exclusively occupies this field and preempts the Ordinance or any similar state or local law. The Ordinance also conflicts with and frustrates federal immigration law and policy and the Constitution's reservation of immigration regulation authority to the federal government. As a result, the Ordinance is unconstitutional under the Supremacy Clause of the United States Constitution. U.S. Const., Art. VI, § 2.

2. Due Process: The Ordinance violates state and federal due process rights by failing to provide any procedure to contest a tenant's designation as an "illegal alien" prior to imposition of sanctions. Even if the city can lawfully require landlords to produce unspecified "identity data" on their tenants, and even if the federal government is able to respond to the city's request for verification of status (neither of which is evident), the Ordinance requires a landlord to "correct" an alleged violation, presumably by evicting the tenant, within 10 business days of receiving notice from the city, without providing any means to contest that the tenant is not lawfully present in the United States.

3. State and Federal Anti-Discrimination and Fair Housing Laws: Because the people most likely to lose their housing as a result of the Ordinance are Latinos, the Ordinance will have a disproportionate adverse impact on Latinos and will tend to have a segregative effect on the City of Escondido in violation of multiple state and federal laws, including but not necessarily limited to state and federal fair housing laws, e.g., 42 U.S.C. §§ 1981, 3604 et seq.; Civil Code §§ 51, 52; Government Code § 12955 et seq.

4. State Law Preemption: Under the Ordinance, if a “violation” is identified by Escondido officials, landlords are given only 10 business days to “correct the violation,” presumably by evicting the tenant who is allegedly not lawfully present in the United States, even if the tenant has fully paid rent and/or is subject to a lease agreement, and even if there are members of the family living in the dwelling unit who are citizens or lawful residents with a fully vested right to remain there. The Ordinance directly contradicts the procedural rights set forth in Civil Code § 1940 et seq. and Code Civ. Proc. § 1159 et seq., and imposes a new basis for commencing eviction proceedings not authorized by state law. The Ordinance therefore conflicts with landlord-tenant laws that contain strict standards for evictions and procedural requirements for unlawful detainer actions, in violation of Art. XI, § 7 of the California Constitution.

5. Abuse of Police Power and Equal Protection: The Ordinance constitutes invidious discrimination and an improper use of the City’s police power prohibiting conduct based on alienage and national origin and violates the equal protection rights of Escondido residents by imposing on them the unique burden of having to produce proof of resident status as a condition precedent to obtaining or retaining housing, and by subjecting them to a punitive statutory scheme that contemplates using race and national origin as factors in its administration.

6. Impairment of Contracts: To the extent the Ordinance would result in substantial impairment of contracts in existence before its adoption, as it is designed to do by inducing landlords to evict tenants who entered into leases in good faith, it impairs the contractual rights and obligations of both landlords and tenants in violation of the Contracts Clause of the United States Constitution. U.S. Const. Art. I, § 10, cl. 1.

We have been asked by several individuals to pursue legal action against the City of Escondido asking for a declaration that the Ordinance is unconstitutional and unlawful, an injunction against its enforcement, statutory damages, litigation costs, and attorney fees. However, before we do so, we are asking the City to repeal the Ordinance, to avoid the necessity and costs of obtaining similar relief from a court, which would ultimately be borne by the City. If litigation is inevitable, we ask the City to stipulate to staying enforcement of the Ordinance pending a preliminary injunction hearing so as to avoid the need to obtain a Temporary Restraining Order.

City Attorney, City of Escondido  
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We request that this demand be placed on the City Council's calendar at the earliest possible opportunity, for discussion in open and/or closed session as appropriate. We are prepared to participate in good faith discussion of this issue. However, if the City fails or refuses to repeal the Ordinance, or to make a binding commitment to do so at the earliest possible opportunity, please be advised we will have no choice but to initiate legal proceedings to block the enforcement of the Ordinance and have it declared unconstitutional and unlawful.

Sincerely Yours,

American Civil Liberties Union  
Foundation of San Diego &  
Imperial Counties  
**s/David Blair-Loy**

ACLU Foundation Immigrants'  
Rights Project  
**s/Omar Jadwat**  
**s/Jenny Chang**

Cooley Godward Kronish LLP  
**s/Anthony M. Stiegler**  
**s/Michael Levinson**  
**s/Phil Tencer**

Fair Housing Council of San Diego  
**s/David A. Kline**

Mexican American Legal Defense and  
Education Fund  
**s/Cynthia Valenzuela**

People for the American Way  
**s/Elliot Minberg**

Rosner & Mansfield LLP  
**s/Hallen D. Rosner**  
**s/Alan M. Mansfield**  
**s/Virginia Y. Calderon**  
**s/Cecilia Brennan**