

**CITY COUNCIL**

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Reso No. \_\_\_\_\_ File No. \_\_\_\_\_

Ord No. \_\_\_\_\_

**Agenda Item No.:** 13.a  
**Date:** **October 4, 2006**

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Jeffrey R. Epp, City Attorney

**SUBJECT:** Renting of Dwelling Units to Illegal Immigrants

**RECOMMENDATION:**

That the City Council consider and adopt an ordinance amending certain provisions of the Escondido Municipal Code to prevent renting of dwelling units to illegal aliens.

**BACKGROUND:**

On February 22, 2006, the City Council asked staff to present a plan for enhanced proactive code enforcement services and a cost estimate. Thereafter, the City Manager formed the Appearance & Compliance Team (ACT) to improve the City's safety, image and appearance through a proactive interdepartmental approach; to focus on the prompt resolution of safety, image and appearance violations; and to improve public awareness of the City's safety, image and appearance resources and regulations. The interdepartmental approach enabled the City to use all of its resources in a coordinated manner to improve the appearance of the City quickly. Since the inception of ACT, there has been regular reporting and an increased focus on property related living and compliance issues in the City.

As part of these efforts and as one component to improving overall appearance and living conditions in neighborhoods, the City Council conducted a public meeting on August 16, 2006 to take testimony and consider the possibility of an ordinance preventing harboring illegal aliens in rental units in the City. More than 50 people expressed views and provided information during the hearing.

Although other cities and jurisdictions (most notably, Hazelton, Pennsylvania) have adopted broader measures which also regulate employment of illegal aliens, the policy direction from the City Council at the August 16, 2006 meeting focused on a measure concerning harboring illegal aliens in rental units. Although the Hazelton ordinance underwent substantial revisions during the original enactment process, and further revisions leading to re-adoption of the measure, the approach ultimately taken by Hazelton is similar to the proposed Escondido ordinance regarding harboring in rental units.

The City Council has also received a study prepared in June 2006 by the National Latino Research Center at California State University, San Marcos. The study reported on the Mission Park Community Survey Project, aimed to assess the needs, concerns, priorities and perceptions of residents in the Mission Park area of Escondido. While not representative of the entire city, the study

focused on a large locale in the center part of Escondido. Among the observations of the study was that "...residents face an array of housing-related challenges that contribute to poor quality of life, including overcrowding, a limited and often deteriorating housing stock, and high rents. The area is characterized by high-density housing units that are often overcrowded and overburdened with extended families or multiple families living in 1 or 2 bedroom apartments." (National Latino Research Center (NLRC), Final Report, June 2005 at p. 17).

In addition to these conclusions, the study observed that "lack of space and privacy places additional burdens on families and may severely limit the areas for children to study and play..." (NLRC Report at p. 18). Moreover, the study noted that "renters who are new immigrants and/or are exceeding the unit capacity are also less likely to complain or identify maintenance problems that could lead to unhealthy housing (mold, mildew poor ventilation, lead, roach, or rodent infestations, or other potential health hazards." (NLRC Report at pg. 18).

With individuals who are not lawfully present in the United States (or "illegal aliens," as the term is used in 8 U.S.C. Section 1621(d)), there is an increased chance that they will reside in dwelling units without typical leasing, payment and other tenancy arrangements that enable the civil and regulatory processes of this City to be effective. The regulations of the City regarding housing and property maintenance often depend upon reporting by residents and neighbors as a means of bringing unlawful conditions to the City's attention. Because illegal aliens do not wish to call attention to their presence, such individuals are less likely to report such conditions, and notify authorities, or to participate in subsequent proceedings to remedy such conditions. This creates an increased likelihood that housing and property maintenance violations will remain unreported. Because such conditions are unreported, there is an increasing chance that such conditions will multiply in the future. There is a greater chance that individuals will occupy residential units in excessively large numbers or under living conditions that do not meet applicable building and health and safety codes. This creates unanticipated burdens on the units and the public infrastructure supporting such dwellings.

Additionally, the lack of normal tenancy arrangements (such as written leases, records of rent receipts, and related documentation which normally accompany a tenancy arrangement) hampers the enforcement processes among private parties (i.e. through small claims court) and with other regulatory agencies at the state and local level. The ability of tenants and neighbors to avail themselves of normal civil and regulatory remedies is hampered.

The United States Supreme Court has made it clear that the federal government possesses the exclusive power to enact a regulation of immigration, which has been defined by the Supreme Court as a "determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain." (See De Canas v. Bica, 424 U.S. 351, 355 (1976)). The federal government's power to regulate immigration derives from the Constitution's grant to Congress of the power to establish a Uniform Rule of Naturalization, and to regulate commerce. Congress has exercised this power in the Immigration and Naturalization Act ("INA"), 8 U.S.C. Section 1001 et. seq.

The INA is a regulatory scheme which regulates the authorized entry, length of stay, residence status and deportation of aliens.

The preemptive effect of federal authority over immigration was felt particularly hard in California after the passage of Proposition 187 in 1994 by a vote of 59% in favor and 41% opposed. The stated purpose of Proposition 187 was "to provide for cooperation between the agencies of state and local government with the federal government, and to establish a system of required notification by and between such agencies, to prevent illegal aliens in the United States from receiving benefits or public services in the State of California" (Proposition 187, Section 1). Nonetheless, after two rounds of litigation in the federal courts, nearly all of the provisions of Proposition 187 were invalidated, generally on federal preemption grounds. Proposition 187 was preempted chiefly because it created new immigration categories at the state level and because it attempted to authorize state officers to make independent judgments about an alien's immigration status. (See League of United Latin American Citizens, et. al. v. Wilson et. al. 908 F. Supp. 755 (9th Cir. 1995), 997 F. Supp. 1244 (9th Cir. 1997)).

Various provisions of the INA criminalize activities relating to the bringing in and harboring of aliens who lack the lawful authority to enter or remain in the United States, and criminalizes certain other activities concerning the transportation of such aliens or the encouragement of inducement of such aliens to reside in the United States, and Courts have generally interpreted the code of INA Section 274 broadly. (See Congressional Research Service Memorandum of June 29, 2006 and cases cited at CRS-2, footnote 5).

However, the Court has also made it clear that the mere fact that a state or local statute pertains to aliens does not require a finding that it is preempted. The Court has left considerable room for states and municipalities to act in the field. "[S]tanding alone, the fact that aliens are the subject of a state statute does not render it a regulation of immigration, which is essentially a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain." (De Canas at p. 355.) State and local statutes affecting aliens that are consistent with congressional objectives have been upheld on numerous occasions. (See, e.g., De Canas (upholding California law concerning the employment of illegal aliens); Arizona v. Salazar, Ariz. Sup. Ct. CR2006-005932 (2006) (upholding state law criminalizing the smuggling of illegal aliens)).

Regulation of businesses within its jurisdiction is a traditional and well accepted provision of California law, flowing from the so-called "police power" of Section 7 of Article XI of the California Constitution, enabling a city to enact measures to protect the health, welfare, and safety of its residents.

Presently, Escondido Municipal Code Section 16-17 requires a business license for all persons engaged in certain types of businesses. Among those regulated are those who rent residential real estate. The general practice of the City has been to require a business license for those who rent units in excess of three units; due to staffing constraints and availability of resources, enforcement of a business license is not requested for individual dwellings on a lot or for individual rooms in a homeowner's home.

The proposed amendment to the Escondido Municipal Code focuses on a particularized local issue, that of rental dwelling units and the conditions in those units. To the extent that harboring illegal aliens contributes to those problems (see discussion above), the City of Escondido can appropriately take action.

The proposed ordinance does not call upon local officials to make independent or separate determinations of legal status--a question properly left to federal authorities. Proposed Section 16E-2 requires individuals who believe a violation is taking place to file a complaint containing certain information, which is used to determine the legal status of those residing in the dwelling. After receiving advice from federal authorities that an individual is in fact an illegal alien, the City may then act against the business license of the landlord harboring the illegal alien. Penalties under the ordinance include suspension and revocation of licenses as well as misdemeanor penalties for subsequent violations. Landlords have certain due process protections against the revocation of their business license, including a right to appeal, which are found in current provisions of the Escondido Municipal Code (see Section 16-221, et seq.).

The proposed ordinance is entirely consistent with federal law on the subject of harboring illegal aliens. Such harboring is prohibited under 8 U.S.C. 1324(a)(1)(A). The provision of housing to illegal aliens is a fundamental component of harboring. Accordingly, the proposed ordinance reinforces federal law and is entirely consistent with congressional objectives as expressed in the INA.

Copies of the materials noted above have been provided to the City Council under separate cover.

Respectfully submitted,



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City Attorney