

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 13.0
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 or 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,



Jeffrey R. Epp
City Attorney

13.a

ORDINANCE NO. 2006-38

AN ORDINANCE OF THE CITY OF ESCONDIDO, CALIFORNIA ESTABLISHING PENALTIES FOR THE HARBORING OF ILLEGAL ALIENS IN THE CITY OF ESCONDIDO

The City Council of the City of Escondido, California, DOES HEREBY ORDAIN as follows:

SECTION 1. FINDINGS. The people of the City of Escondido find and declare:

1. Federal law requires that certain conditions be met before an alien may be authorized to be a lawful permanent resident, or be lawfully present, in the United States. Those conditions are found principally at United States Code Title 8, section 1101 et. seq.
2. Illegal aliens, as defined by federal law, do not normally meet such conditions as a matter of law when present in the City.
3. The harboring of illegal aliens in dwelling units in the City, and crime committed by illegal aliens harm the health, safety and welfare of legal residents in the City.

Because such individuals are not in this country lawfully, 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 and, because such conditions are unreported, an increased chance that such conditions will multiply in the future.

Because of the lack of tenancy arrangements which are subject to normal civil and regulatory processes (such as written leases, records of rent receipts, and related documentation which normally accompany a tenancy arrangement) there is a greater chance that such 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.

4. The state and federal government lack the resources to properly protect the citizens of the City of Escondido from the adverse effects of the harboring of illegal aliens, and the criminal activities of some illegal aliens.

5. The City finds that it is in the best interest of and will serve and benefit the health, safety and welfare of the public and law-abiding business entities and property owners to adopt policies and procedures to deter and prevent the harboring of illegal aliens, and criminal activity by illegal aliens.

6. United States Code Title 8, subsection 1324(a)(1)(A) prohibits the harboring of illegal aliens. The provision of housing to illegal aliens is a fundamental component of harboring.

7. The City shall not construe this Ordinance to prohibit the rendering of emergency medical care, emergency assistance, or legal assistance to any person.

SECTION 2. DEFINITIONS. The following definition shall be added to Section 16-3, and shall be construed so as to be consistent with state and federal law, including federal immigration law:

Illegal Alien: An alien who is not lawfully present in the United States, according to the terms of United States Code Title 8, section 1101 et seq. The City shall not conclude that a person is an illegal alien unless and until an authorized representative of the City has verified with the federal government, pursuant to United States Code Title 8, subsection 1373(c), that the person is an alien who is not lawfully present in the United States.

SECTION 3. HARBORING ILLEGAL ALIENS. The Escondido Municipal Code is amended to add Chapter 16E, commencing with Section 16E-1 to read as follows:

Section 16E-1. **HARBORING ILLEGAL ALIENS.** It is unlawful for any person or business entity that owns a dwelling unit in the City and is subject to Section 16-17, to harbor an illegal alien in the dwelling unit, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, unless such harboring is otherwise expressly permitted by federal law.

a. For the purposes of this section, to let, lease, or rent a dwelling unit to an illegal alien, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, shall be deemed to constitute harboring. To suffer or permit the occupancy of the dwelling unit by an illegal alien, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, shall also be deemed to constitute harboring.

b. A separate violation shall be deemed to have been committed on each day that such harboring occurs, and for each adult

illegal alien harbored in the dwelling unit, beginning one business day after receipt of a notice of violation from the City.

c. A separate violation of this section shall be deemed to have been committed for each business day on which the property owner has failed, following written notice from the City, to provide the City with identity data needed to obtain a federal verification of immigration status, beginning five business days after the property owner receives written notice from the City.

Section 16E-2 Enforcement. The Business License Division shall enforce the requirements of this section.

a. An enforcement action shall be initiated by means of a written signed complaint to the City submitted by any official, business entity, or resident of the City. A valid complaint shall include an allegation that describes the alleged violator(s) as well as the actions constituting the violation, and the date and location where such actions occurred.

b. A complaint which alleges a violation solely or primarily on the basis of national origin, ethnicity, or race shall be deemed invalid and shall not be enforced.

c. Upon receipt of a valid written complaint, the City shall, pursuant to United States Code Title 8, section 1373(c), verify with the federal government the lawful immigration status of a person seeking to use, occupy, lease, or rent a dwelling unit in the City. The Business License Division shall submit identity data required by the federal government to verify immigration status. The City shall forward identity data provided by the property owner to the federal government, and shall

provide the property owner with written confirmation of such request for verification.

d. If after five business days following receipt of written notice from the City that a violation has occurred and that the immigration status of any alleged illegal alien has been verified, pursuant to United States Code Title 8, section 1373(c), the owner of the dwelling unit fails to correct a violation of this section, the City shall deny or suspend the business license of the dwelling unit as provided in Section 16-235.

e. For the period of suspension, the owner of the dwelling unit shall not be permitted to collect any rent, payment, fee, or any other form of compensation from, or on behalf of, any tenant or occupant in the dwelling unit.

f. The denial or suspension shall terminate one business day after a legal representative of the dwelling unit owner submits, to the Business License Division, a sworn affidavit stating that each and every violation has ended. The affidavit shall include a description of the specific measures and actions taken by the business entity to end the violation, and shall include the name, address and other adequate identifying information for the illegal aliens who were the subject of the complaint.

g. The City shall forward the affidavit, complaint, and associated documents to the appropriate state or federal enforcement agency.

h. Any dwelling unit owner who commits a second or subsequent violation of this section shall be subject to penalties as provided in Section 16-249 for each separate violation. The suspension provisions of this section applicable to a first violation shall also apply.

i. Upon the request of a dwelling unit owner subject to this Section, the City shall, pursuant to United States Code Title 8, section 1373(c), verify with the federal government the lawful immigration status of a person seeking to use, occupy, lease, or rent a dwelling unit in the City. The penalties in this section shall not apply in the case of occupants of a dwelling unit whose status as an alien lawfully present in the United States has been verified.

SECTION 4. CONSTRUCTION. The requirements and obligations of this section shall be implemented in a manner fully consistent with federal law regulating immigration and protecting the civil rights of all citizens and aliens.

SECTION 5. CERTIFICATION. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be prepared in accordance with Government Code Section 36933, to be published one time within 15 days of its passage in the North County Times, a newspaper of general circulation, printed and published in the City of Escondido.

SECTION 6. SEPARABILITY. If any section, subsection sentence, clause, phrase, or portion of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions.



CITY COUNCIL

For City Clerk's Use:

APPROVED DENIED

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 136
Date: October 4, 2006

TO: Honorable Mayor and Members of the City Council
FROM: Clay Phillips, City Manager
SUBJECT: TRACKING IMPACTS OF ORDINANCE PERTAINING TO RENTING OF DWELLING UNITS TO ILLEGAL IMMIGRANTS

RECOMMENDATION:

It is requested that the City Council approve the recommended items for tracking and to provide further direction, if necessary.

FISCAL ANALYSIS:

No analysis

CORRELATION TO THE CITY COUNCIL ACTION PLAN:

This item relates to several categories of the Council's Action Plan including Community Outreach, Economic Development, and Image and Appearance.

PREVIOUS ACTION:

The City Council directed staff at the September 27, 2006 meeting to return to the October 4th City Council meeting with a report listing the types of data and expenses that City Staff would be able to track resulting from the enactment of an ordinance prohibiting the renting of dwelling units to illegal immigrants.

FINDINGS:

Staff has determined that it will be possible to track the following information:

Expenses:

Legal fees resulting from lawsuits challenging the ordinance; Outside counsel fees to defend the ordinance; Salary and benefits for additional employee to investigate properties; and Development and conduction of training sessions for landlords to comply with ordinance;

Data:

Staff hours spent to train landlords and inspect properties; Number of landlords trained; Number of landlords cited; Number of illegal immigrants removed;

The tracking of any other impacts on the community, both positive and negative, that are created by the ordinance, including those related to jobs, housing, and economic vitality, are beyond the ability of city staff to track and would need to be performed by an outside party.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Clay Phillips', with a long horizontal flourish extending to the right.

Clay Phillips
City Manager