

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS  
STATE OF MISSOURI

STEPHANIE REYNOLDS, FLORENCE )  
STREETER, JACQUELINE GRAY, and )  
THE METROPOLITAN ST. LOUIS )  
EQUAL HOUSING OPPORTUNITY )  
COUNSEL, INC., )

Plaintiffs, )

v. )

CITY OF VALLEY PARK, MO, )  
JEFFERY WHITTEAKER, in his official )  
capacity as Mayor of the City of )  
Valley Park, MO, and JOHN BRUST, )  
DANIEL ADAMS, RANDY HELTON, )  
DON CARROLL, MICHAEL PENNISE, )  
ED WALKER, STEVE DRAKE, and )  
J. MICHAEL WHITE, in their official )  
capacity as Aldermen of the City of )  
Valley Park, MO )

Defendants. )

**FILED**

SEP 27 2006

JOAN M. GILMER  
CIRCUIT CLERK, ST. LOUIS COUNTY

Cause No. 06-CC-3802

Division No. 13

**FIRST AMENDED PETITION FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

For their First Amended Petition, Plaintiffs Stephanie Reynolds, Florence Streeter, Jacqueline Gray, and The Metropolitan St. Louis Equal Housing Opportunity Commission, state as follows:

**INTRODUCTION**

1. This action is filed under MO.R.STAT. § 527.020, and pursuant to MO.R.CIV.P. 87.02, to seek a declaration that the following two Ordinances are void: (1) Ordinance No. 1708, enacted on July 17, 2006, entitled "An Ordinance Relating to Illegal Immigration Within the City of Valley Park, MO" (a copy of which is attached hereto as Exhibit A); and (2) Ordinance No. 1715, enacted on September 26, 2006, originally entitled "An

Ordinance Repealing Ordinance No. 1708 Relating to Illegal Immigration Within the City of Valley Park, MO, and Enacting a New Ordinance in Lieu Thereof With The Same Subject,” and re-titled by oral motion on the day of enactment as “An Ordinance Repealing Sections 1, 2, 3, and 4 of Ordinance No. 1708 Relating to Illegal Immigration Within the City of Valley Park, MO, and Enacting a New Ordinance in Lieu Thereof Relating to the Employment and Harboring of Illegal Aliens in the City of Valley Park, MO” (a copy of which is attached hereto as Exhibit B). The Petition also seeks a temporary, preliminary, and permanent injunction restraining enforcement of those Ordinances.

2. For the first time in Missouri history, a political subdivision of this State is attempting to regulate immigration into the United States by attacking it at the local level based on expressed concerns related “to the security and safety of the homeland.”

3. Ordinance No. 1708 and Ordinance No. 1715 are both directed at regulating immigration. The bolded heading of Ordinance No. 1708 states that it is an Ordinance “Relating to Illegal Immigration.” And, although Defendants attempted to avoid the obvious by a last minute change to the heading of Ordinance No. 1715, its “Title” as set forth in the body of the Ordinance expressly indicates that it is an “Illegal Immigration Relief Act Ordinance.” Ordinance No. 1715 also expressly states that it was implemented because of, *inter alia*, “concerns to the security and safety of the homeland.”

#### **BACKGROUND**

4. On Monday September 25, 2006, this Court granted Plaintiffs (and Intervenor) their requested Temporary Restraining Order (“TRO”), enjoining enforcement of Ordinance No. 1708. (A copy of the Temporary Restraining Order is attached hereto as Exhibit C).

5. The day after the TRO was issued, Defendants repealed Sections One, Two,

Three, and Four of the patently unconstitutional and unlawful Ordinance No. 1708, and passed the equally unlawful (though much more complex) replacement Ordinance No. 1715. Defendant Mayor Jeffery Whitteaker signed Ordinance No. 1715 on September 26, 2006, rendering it effective by its terms.

6. The passage of Ordinance No. 1715, which is a newly titled but factually and legally similar law, merely serves to circumvent and/or frustrate the temporary restraining order entered by this Court. Ordinance No. 1715, like Ordinance No. 1708, is constitutionally and statutorily infirm, rendering further immediate injunctive relief proper. Specifically, enforcement of Ordinance No. 1715 should be enjoined until the scheduled November 1 preliminary injunction hearing in this matter.

7. This Court has already found that enforcement of Ordinance No. 1708 will cause irreparable harm to Plaintiffs. Ordinance No. 1715—which is effectively aimed at the same conduct as Ordinance No. 1708, i.e., penalizing employers and landlords who employ, or provide housing to, “illegal aliens”—will likewise immediately and irreparably harm Plaintiffs who will continue to lose their tenants and their customer bases, as well as the goodwill they have developed with customers and tenants over long periods of time.

8. Plaintiffs herein have standing to challenge the validity of Ordinance No. 1708 and Ordinance No. 1715 under MO.R.STAT. 527.020 which provides, in relevant party, that “[a]ny person ... whose rights, status or other legal relations are affected by a ... municipal ordinance ... may have determined any question of construction or validity arising under the ... ordinance ... and obtain a declaration of rights, status or other legal relations thereunder.” The rights of the Plaintiffs herein have been affected by Ordinance No. 1708 and Ordinance No. 1715, and they thus seek a determination of their validity and a declaration of their rights, as

well as an injunction to preserve the same. Plaintiffs also have standing because they have suffered, and continue to suffer, irreparable injury-in-fact as a direct result of the enactment and attempted enforcement of Ordinance No. 1708 and Ordinance No. 1715.

9. The provisions of Ordinance No. 1708, and Ordinance No. 1715: infringe the constitutionally granted federal immigration power, which the United States Supreme Court has repeatedly held is reserved to the federal government; conflict with federal immigration law; were enacted in excess of Valley Park's delegated authority; promote discrimination in housing, thus violating the federal Fair Housing Act; are preempted by the federal Fair Housing Act; unconstitutionally impair existing contracts; and violate Missouri's landlord and tenant statute.

#### **PARTIES**

10. Stephanie Reynolds is a resident of Valley Park, Missouri, and the owner of multiple rental units in that City, as well as a local convenience store. She does not know the legal status of the tenants leasing her properties, and she does not have the necessary resources and legal expertise to determine whether a tenant or prospective tenant is lawfully present in the United States, and thus not an "illegal alien" under the terms of Ordinance No. 1708 or Ordinance No. 1715. She has lost business as a direct result of the enactment of Ordinance No. 1708, and she will continue to lose business due to the enactment of Ordinance No. 1715, in that Hispanic tenants have left her properties, and the departure of immigrant residents has resulted in a decrease of her business profits. Stephanie Reynolds has never based, and currently does not want to appear as though she is basing, her decision to lease a property to, or to do business with, an individual upon that individual's race, or national origin. Stephanie Reynolds does not want to lose the goodwill she has established with her tenants by sharing their identifying information with law enforcement officials as could be required under Ordinance

No. 1715. She is fearful that, as a business owner, she may lose her business license, temporarily or permanently, if one of her employees is deemed to be an “unlawful worker” by the City of Valley Park. Likewise, as a landlord, she is fearful of losing her tenants, her occupancy permits, the rent and fees she is legally entitled to collect, and that a fine of \$250 per day could be imposed on her if one of her tenants is deemed to be an “illegal alien.” Ordinance No. 1715 places Stephanie Reynolds in the untenable position of needing to verify the immigration status of potential tenants without the resources to do so, and at risk of violating the antidiscrimination provisions of the federal Fair Housing Act.

11. Florence Streeter is the owner of residential and commercial rental units within the City of Valley Park. She does not know the legal status of the tenants leasing her properties, and she does not have the necessary resources and legal expertise to determine whether a tenant or prospective tenant is lawfully present in the United States, and thus not an “illegal alien” under the terms of Ordinance No. 1708 or Ordinance No. 1715. Florence Streeter has lost tenants as a result of the enactment of Ordinance No. 1708, and she runs the risk of continuing to lose tenants as a result of the enactment of Ordinance No. 1715. Furthermore, since the time Defendants first attempted to regulate immigration through a local Valley Park Ordinance, Florence Streeter has noted, and continues to note, a decline in interest by Hispanics in renting her properties. Florence Streeter does not want to lose the goodwill she has established with her tenants by sharing their identifying information with law enforcement officials as could be required under Ordinance No. 1715. As a landlord, she is fearful of losing her tenants, her occupancy permits, the rent and fees she is legally entitled to collect, and that a fine of \$250 per day could be imposed on her if one of her tenants is deemed to be an “illegal alien.” Ordinance No. 1715 places Florence Streeter in the untenable position of needing to verify the immigration status of

potential tenants without the resources to do so, and at risk of violating the antidiscrimination provisions of the federal Fair Housing Act.

12. Jacqueline Gray is a resident of St. Louis County, and owns rental units in Valley Park, Missouri. She does not want to lose the goodwill she has established with her tenants by sharing their identifying information with law enforcement officials as could be required under Ordinance No. 1715. As a landlord, she is fearful of losing her tenants, her occupancy permits, the rent and fees she is legally entitled to collect, and that a fine of \$250 per day could be imposed on her if one of her tenants is deemed to be an "illegal alien." Ordinance No. 1715 places Jacqueline Gray in the untenable position of needing to verify the immigration status of potential tenants without the resources to do so, and at risk of violating the antidiscrimination provisions of the federal Fair Housing Act.

13. The Metropolitan St. Louis Equal Housing Opportunity Council, Inc. ("EHOC") is a Missouri nonprofit corporation. It is a fair housing agency funded by the United States Department of Housing and Urban Development, as well as other sources, to investigate and eliminate housing discrimination and to educate the public about fair housing matters. Because Ordinance No. 1708 and Ordinance No. 1715 promote discrimination in the provision of housing, it frustrates the organizational mission of the EHOC. Since the enactment of Ordinance No. 1708, and as will continue under Ordinance No. 1715, the EHOC has been forced to devote significant resources to conducting outreach activities in the Valley Park area, and in its immigrant communities, to ensure people are aware of their fair housing rights, to educate housing providers in Valley Park about their responsibilities under the Fair Housing Act, and to meet with local organizations and individuals concerned about the impact of the ordinance on

immigrant communities. These activities have interfered with the EHOC's mission of fair housing, counseling, and education by causing a diversion of its resources.

14. Defendant City of Valley Park, Missouri is a City of the fourth class located in St. Louis County, Missouri.

15. Defendant Jeffrey Whitteaker is the mayor of Valley Park, Missouri and was actively involved in, and gave final approval for, the enactment of Ordinance No. 1708 and Ordinance No. 1715.

16. Defendants, John Brust, Daniel Adams, Randy Helton, Don Carroll, Michael Pennise, Ed Walker, Steve Drake, and J. Michael White are alderpersons in Valley Park, Missouri, and were actively involved in, and voted in favor of, the passage of Ordinance No. 1708 and Ordinance No. 1715.

17. At all times alleged herein, Defendant City of Valley Park and the Defendant Mayor and Aldermen were acting under color of state law, and thus are sued only in their official capacities.

#### **VENUE AND JURISDICTION**

18. Jurisdiction in this Court is proper pursuant to MO.R.STAT. § 478.220.

19. Venue is proper in this Court pursuant to MO.R.STAT. § 508.010.

#### **THE ENACTMENT OF ORDINANCE 1708 & ORDINANCE NO. 1715**

20. On July 17, 2006, Defendants enacted Ordinance No. 1708. Defendants declared that Ordinance No. 1708 was necessary to address higher crime rates, overcrowded classrooms and failing schools, neighborhood destruction, and a diminishing overall quality of life. Prior to enactment of Ordinance No. 1708, Defendants had done no investigation or research to determine the effects of illegal immigration on crime rates, educational opportunities,

neighborhoods, or quality of life. Prior to such enactment, Defendants had no evidence in their possession which related to the effects of illegal immigration on crime rates, educational opportunities, neighborhoods, or quality of life.

21. After the enactment of Ordinance No. 1708, the Defendants admitted that the Ordinance had been enacted solely as a “preventative measure,” and that they had no knowledge as to whether any “illegal aliens” resided or lived in Valley Park.

22. On September 26, 2006, Defendants enacted Ordinance No. 1715. On information and belief, with few exceptions, Defendants copied Ordinance No. 1715 from proposed legislation pending in a different city in a different state; indeed, in listing the ills of “illegal immigration” Defendants referred to “fiscal hardship” on “our hospitals” even though Valley Park has none. Defendants declare in Ordinance No. 1715 that it is being enacted because “illegal aliens harm the health, safety and welfare of authorized US workers and legal residents in the City of Valley Park” and that “illegal immigration” leads to “higher crime rates,” “burdens public services,” “diminishes [] overall quality of life” and “provides concerns to the security and safety of the homeland.”

23. Defendants enacted Ordinance No. 1715 without having done any investigation or research to determine the effects of illegal immigration on crime rates, public services, quality of life, or homeland security. Prior to such enactment, Defendants had no evidence in their possession which related to the effects of illegal immigration on crime rates, public services, quality of life, or homeland security. On information and belief, defendants and other officials of the City of Valley Park have received no training and have no expertise in making determinations of immigration status or in interpreting immigration documentation.



**WHY AN AWARD OF DECLARATORY AND INJUNCTIVE RELIEF IS PROPER**

24. Ordinance No. 1708 (to the extent any of its provisions remain valid) and Ordinance No. 1715 should be declared void and unenforceable, and a modified temporary restraining order should be entered adding a provision to enjoin the enforcement of Ordinance No. 1715. In addition, a preliminary and permanent injunction should be entered restraining enforcement of both Ordinance No. 1708 and Ordinance No. 1715. Such relief is justified for the following reasons:

(a) Ordinance No. 1708 and Ordinance No. 1715 violate the Supremacy Clause of the United States Constitution, art. VI, cl. 2. The power to regulate immigration is vested exclusively in the federal government pursuant to the Constitution's grant to the Federal government of the power to "establish a uniform Rule of Naturalization," (U.S. Const. art. I, § 8, cl. 4), and "to regulate Commerce with foreign Nations" (U.S. Const. art. I, § 8, cl. 3). The Federal government has established a comprehensive system of laws, regulations, procedures, and administrative agencies that determine, subject to judicial review, whether and under what conditions a given individual may enter, stay in, and work in the United States. 8 U.S.C. § 1101, et seq. These Federal immigration laws also include provisions directed at other classes of individuals, such as those who employ or assist immigrants. The federal immigration scheme is comprehensive and includes sanctions, documentation, and anti-discrimination provisions directly applicable to employers, as well as a criminal and civil scheme applicable to those who assist individuals who are not lawfully in the United States. Ordinance No. 1708 and Ordinance No. 1715 encroach on the federal

government's exclusive power to regulate immigration, attempt to legislate in fields which are completely occupied by the federal government, and, additionally or alternatively, conflict with federal laws, regulations, policies and objectives. Both Ordinances are thus preempted;

(b) Ordinance No. 1708 and Ordinance No. 1715 were enacted in violation of the limited powers delegated to the City of Valley Park by the Missouri legislature. A city's authority to exercise police power must come from a specific delegation by the state. Pursuant to MO.R.STAT. § 79.110, the City of Valley Park has the power to enact only those ordinances "not repugnant to the constitution and laws of this state, and such as they shall deem expedient for the good government of the city, the preservation of peace and good order, the benefit of trade and commerce and the health of the inhabitants thereof, and such other ordinances, rules and regulations as may be deemed necessary to carry such powers into effect, and to alter, modify or repeal the same." No authority has been delegated to the City of Valley Park to regulate immigration. Furthermore, Ordinance No. 1708 and Ordinance No. 1715 are repugnant to the Constitution of the State of Missouri, including those provisions set forth below and, in addition, Article I, § 2 which guarantees "*all* persons" in this State the "right to life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry" and that "*all* persons" will be given "equal rights and opportunity under the law." Ordinance No. 1715 is also repugnant to the laws of this State in that, in order to avoid penalties under its provisions, a landlord who is found renting to an "illegal alien" must evict such a person within five (5) days. This five day notice period

compels a violation of MO.R.STAT. § 441.060, which requires that a landlord give a tenant in possession of property on a month-to-month lease notice of at least thirty (30) days, and it compels a violation of general Missouri contract law which requires that a landlord fulfill his lease obligations. In addition, there is no basis to conclude that the Ordinance is expedient for the good government of the city, the preservation of peace and good order, the benefit of trade and commerce, or the health of the inhabitants of Valley Park;

(c) Ordinance No. 1708 and Ordinance No. 1715 violate MO.R.STAT. § 79.470 in that the contemplated penalties exceeds the maximum punishment which the board of aldermen in a class four city is authorized to impart. A fourth class city is limited to imposing penalties for violation of a municipal ordinance at an amount “not exceeding” \$500.00. Both Ordinances allow for penalties, the value of which clearly exceeds this limitation. For example, Ordinance No. 1715 allows for the indefinite suspension of business licenses, occupancy permits, and the collection of rent, the value of which could greatly exceed the limitation imposed by state law for violation of an ordinance enacted by a fourth class city. By doing so, Ordinance No. 1708 and Ordinance No. 1715 clearly violate the Eighth and Fourteenth Amendments to the United States Constitution and Article I Section 21 of the Constitution of the State of Missouri.

(d) Ordinance No. 1708 and Ordinance No. 1715 are void as arbitrary and unreasonable, because the conduct they seek to regulate bears no substantial or rational relationship to the health, safety, peace, comfort or general welfare of the residents of the City of Valley Park. There is no evidence that illegal

immigration impacts crime rates, public services, quality of life, or homeland security. Thus, Ordinance No. 1708 and Ordinance No. 1715 are not a legitimate exercise of the police power granted to the City of Valley Park;

(e) Ordinance No. 1708 and Ordinance No. 1715 violate Article I, § 10 of the Constitution of the State of Missouri, as well as the Fourteenth Amendment of the United States Constitution, which guarantee that no person shall be deprived of “life, liberty, or property without due process of law.” For example, Ordinance No. 1708 provides no notice of who is an “illegal alien” or what conduct might be deemed to be “aiding and abetting.” And, Ordinance No. 1715 is based on text found nowhere within the Ordinance itself, in that, for its main provisions, it merely references by citation to code provisions parts of the complex federal law governing immigration. The Ordinance, having incorporated federal law, cannot be understood by persons of common intelligence, and thus Ordinance No. 1715 gives no fair warning of what the law intends. Both Ordinance No. 1708 and Ordinance No. 1715 lack explicit standards necessary to avoid arbitrary and discriminatory application by those enforcing its provisions. As such, the Ordinance No. 1708 and Ordinance No. 1715 fail to afford due process by which individuals like Plaintiffs can ensure they are not subject to the loss of liberty or property for a violation;

(f) Ordinance No. 1708 and Ordinance No. 1715 are preempted by the Fair Housing Act, 42 U.S.C. §§ 3601–19, which expressly provides that “the law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under

this subchapter shall to that extent be invalid.” 42 U.S.C. § 3615. Ordinance No. 1708 and Ordinance No. 1715 promote discriminatory housing practices. Because a landlord has no way to determine whether a potential tenant is an “illegal alien” “pursuant to United States Code Title 8, section 1373(c)” at the time of leasing a property, the Ordinances put landlords, like Plaintiffs, in a predicament, whereby they must choose between: leasing property to a person who looks like he may be an “illegal alien” and accepting the risk that he will not be able to fulfill his lease term upon enforcement of the Ordinances; and refusing to lease to someone who looks as though he may be an “illegal alien” based on his apparent heritage. Ordinance No. 1715 thus promotes the practice of refusing to lease property based on apparent national origin;

(g) Ordinance No. 1708 and Ordinance No. 1715 themselves violate the Fair Housing Act, which prohibits housing practices that discriminate on the basis of, *inter alia*, race, color, and national origin. The Ordinances have at least a disparate impact on people of Mexican or other Latino heritage as well as on those who, by virtue of their skin color or other features, are believed to be of Mexican or other Latino heritage, and are likely to have a similar disparate impact on members of other minority ethnic groups;

(h) Ordinance No. 1708 and Ordinance No. 1715 are repugnant to Article I, § 13 of the Constitution of the State of Missouri, and Article I, § 10 of the United States Constitution in that they impair obligations made under contracts. To avoid prosecution under Ordinance No. 1708 and Ordinance No. 1715, a property owner who has entered into a contract for the lease of rental

property with someone who is deemed to be an “illegal alien” must breach that lease or be subject to the penalties provided under the Ordinance;

25. By being subject to the imposition of invalid and unconstitutional Ordinances, Plaintiffs have been irreparably injured in their businesses and livelihoods, and will continue to be until such time as Ordinance No. 1708 and Ordinance No. 1715 are declared void and invalid, and an injunction is entered enjoining their enforcement.

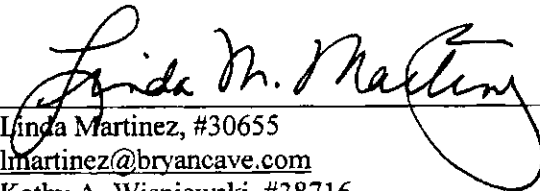
#### **PRAYER FOR RELIEF**

FOR RELIEF Plaintiffs respectfully request that this Court declare Valley Park Ordinance No. 1708 and Ordinance No. 1715 void, and that it enter a modified temporary restraining order enjoining the provisions of Ordinance No. 1715, and, in addition, that it enter a preliminary and permanent injunction restraining enforcement of the provisions of the Ordinances, and that this Court award Plaintiffs their costs and attorneys’ fees incurred herein.

Respectfully submitted,

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\_\_\_\_\_

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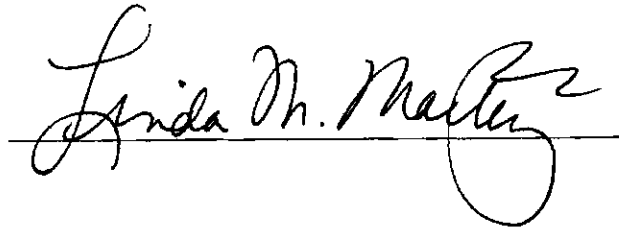
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the First Amended Petition was forwarded, via facsimile and hand-delivery, on this 27th day of September, 2006, to:

Eric M. Martin, Esq.  
109 Chesterfield Business Parkway  
Chesterfield, MO 63005-1233

A handwritten signature in black ink, reading "Linda M. Martin", is written over a horizontal line. The signature is cursive and includes a large loop at the end.

BILL NO. 1851

ORDINANCE NO. 1708

\*\*\*\*\*

**AN ORDINANCE RELATING TO  
ILLEGAL IMMIGRATION WITHIN  
THE CITY OF VALLEY PARK, MO**

\*\*\*\*\*

WHEREAS, the Board of Aldermen of the City of Valley Park finds that illegal immigration leads to higher crime rates, contributes to overcrowded classrooms and failing schools, and destroys our neighborhoods and diminishes our overall quality of life; and

WHEREAS, the City of Valley Park is empowered and mandated by the people of the City of Valley Park to abate the nuisance of illegal immigration by aggressively prohibiting and punishing the acts, policies, people and businesses that aid and abet illegal aliens;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF VALLEY PARK, MISSOURI, AS FOLLOWS:

**Section One**

**DEFINITIONS.**

Whenever used in this chapter, the following terms shall have the following meanings:

“City” means the City of Valley Park, Missouri;

“Contract employer” means any person who obtains the services of one or more individuals through a day labor agency; and

“Vehicle” means a vehicle as defined in State or Missouri Vehicle Code as the same now reads or may hereafter be amended.

**Section Two**

**BUSINESS PERMITS, CONTRACTS OR GRANTS.**

Any for-profit entity, including acts committed by its parent company or subsidiaries, that aids and abets illegal aliens or illegal immigration shall be denied approval of a business permit, the renewal of a business permit, city contracts or grants for a period not less than five (5) years from its last offense.

**EXHIBIT A**

- A. Aiding and abetting shall include, but not be limited to, the hiring or attempted hiring of illegal aliens, renting or leasing to illegal aliens, or funding or aiding in the establishment of a day laborer center that does not verify legal work status.
- B. Any act that aids and abets illegal aliens within the United States, not just within the City limits, will constitute a violation.

**Section Three**

**RENTING TO ILLEGAL ALIENS.**

- A. Illegal aliens are prohibited from leasing or renting property. Any property owner or renter/tenant/lessee in control of property, who knowingly allows an illegal alien to use, rent or lease their property shall be in violation of this section.
- B. Any person or entity that violates this section shall be subject to a fine of not less than Five Hundred Dollars (\$500.00).

**Section Four**

**ENGLISH ONLY.**

- A. The City of Valley Park declares that English is the official language of the City.
- B. Unless explicitly mandated by the federal government, the State of Missouri or the City of Valley Park, all official city business, forms documents, signage, telecommunication or electronic communication devices will be conducted or written in or utilize English only.

**Section Five**

**SEVERABILITY.**

If any part of provision of this Chapter is in conflict or inconsistent with applicable provisions of federal or state statutes, or is otherwise held to be invalid or unenforceable by any court of competent jurisdiction, such part of provision shall be suspended and superseded by such applicable laws or regulations, and the remainder of this Chapter shall not be affected thereby.

**Section Six**

This ordinance shall become effective from and after its passage and upon approval by the Mayor.

**PASSED AND APPROVED THIS 17<sup>TH</sup> DAY OF JULY, 2006**

09/25/2006 10:34 FAX 636 530 1056

J RONALD LACEY, ATTORNEY

001

BILL NO. 1858

ORDINANCE NO. \_\_\_\_\_

\*\*\*\*\*

**AN ORDINANCE REPEALING  
ORDINANCE NO. 1708 RELATING TO ILLEGAL  
IMMIGRATION WITHIN THE CITY OF VALLEY PARK, MO,  
AND ENACTING A NEW ORDINANCE IN LIEU THEREOF  
WITH THE SAME SUBJECT**

\*\*\*\*\*

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF VALLEY PARK, MISSOURI, AS FOLLOWS:

**Section One**

**TITLE.**

This chapter shall be known and may be cited as the "City of Valley Park Illegal Immigration Relief Act Ordinance."

**Section Two**

**FINDINGS AND DECLARATION OF PURPOSE.**

The people of the City of Valley Park find and declare:

- A. That state and federal law require that certain conditions be met before a person may be authorized to work or reside in this country.
- B. That unlawful workers and illegal aliens, as defined by this ordinance and state and federal law, do not normally meet such conditions as a matter of law when present in the City of Valley Park.
- C. That unlawful employment, the harboring of illegal aliens in dwelling units in the City of Valley Park, and crime committed by illegal aliens harm the health, safety and welfare of authorized US workers and legal residents in the City of Valley Park. Illegal immigration leads to higher crime rates, subjects our hospitals to fiscal hardship and legal residents to substandard quality of care, contributes to other burdens on public services, increasing their costs and diminishing their availability to legal residents, and diminishes our overall quality of life and provides concerns to the security and safety of the homeland.

**EXHIBIT B**

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- D. That the City of Valley Park is authorized to abate public nuisances and empowered and mandated by the people of Valley Park to abate the nuisance of illegal immigration by diligently prohibiting the acts and policies that facilitate illegal immigration in a manner consistent with federal law and the objectives of Congress.
- E. That 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.
- F. This ordinance seeks to secure to those lawfully present in the United States and this City, whether or not they are citizens of the United States, the right to live in peace free of the threat of crime, to enjoy the public services provided by this City without being burdened by the cost of providing goods, support and services to aliens unlawfully present in the United States, and to be free of the debilitating effects on their economic and social well being imposed by the influx of illegal aliens to the fullest extent that these goals can be achieved consistent with the Constitution and Laws of the United States and the State of Missouri.
- G. The City shall not construe this ordinance to prohibit the rendering of emergency medical care, emergency assistance, or legal assistance to any person.

### Section Three

#### **DEFINITIONS.**

When used in this chapter, the following words, terms and phrases shall have the meanings ascribed to them herein, and shall be construed so as to be consistent with state and federal law, including federal immigration law:

- A. "Business entity" means any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood, whether for profit or not for profit.
  - (1) The term business entity shall include, but not be limited to, self-employed individuals, partnerships, corporations, contractors, and subcontractors.
  - (2) The term business entity shall include any business entity that possesses a business license, any business entity

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that is exempt by law from obtaining such a business license, and any business entity that is operating unlawfully without such a business license.

- B. "City" means the City of Valley Park, Missouri.
- C. "Contractor" means a person, employer, subcontractor or business entity that enters into an agreement to perform any service or work or to provide a certain product in exchange for valuable consideration. This definition shall include, but not be limited to, a subcontractor, contract employee, or a recruiting or staffing entity.
- D. "Illegal Alien" means 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.
- E. "Unlawful worker" means a person who does not have the legal right or authorization to work due to an impediment in any provision of federal, state or local law, including, but not limited to, a minor disqualified by nonage, or an unauthorized alien as defined by United States Code Title 8, subsection 1324a(h)(3).
- F. "Work" means any job, task, employment, labor, personal services, or any other activity for which compensation is provided, expected, or due, including, but not limited to, all activities conducted by business entities.
- G. "Basic Pilot Program" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration responsibility Act of 1996, P.L. 104-208, Division C, Section 403(a); United States Code Title 8, subsection 1324a, and operated by the United States Department of Homeland Security (or a successor program established by the federal government.)

#### Section Four

#### **BUSINESS PERMITS, CONTRACTS, OR GRANTS.**

- A. It is unlawful for any business entity to recruit, hire for employment, or continue to employ, or to permit, dispatch, or instruct any person who is an unlawful worker to perform work



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In whole or part within the City. Every business entity that applies for a business license to engage in any type of work in the City shall sign an affidavit, prepared by the City Attorney, affirming that they do not knowingly utilize the services or hire any person who is an unlawful worker.

- B. Enforcement:** The Valley Park Code Enforcement Office shall enforce the requirements of this section.
- (1) An enforcement action shall be initiated by means of a written signed complaint to the Valley Park Code Enforcement Office submitted by any City official, business entity, or City resident. A valid complaint shall include an allegation which describes the alleged violator(s) as well as the actions constituting the violation, and the date and location where such actions occurred.
  - (2) 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.
  - (3) Upon receipt of a valid complaint, the Valley Park Code Enforcement Office shall, within three (3) business days, request identify information from the business entity regarding any persons alleged to be unlawful workers. The Valley Park Code Enforcement Office shall suspend the business permit of any business entity which fails, within three (3) business days after receipt of the request, to provide such information.
  - (4) The Valley Park Code Enforcement Office shall suspend the business license of any business entity which fails to correct a violation of this section within three (3) business days after notification of the violation by the Valley Park Code Enforcement Office.
  - (5) The Valley Park Code Enforcement Office shall not suspend the business license of a business entity if prior to the date of the violation, the business entity had verified the work authorization of the alleged unlawful worker(s) using the Basic Pilot Program.
  - (6) The suspension shall terminate one (1) business day after a legal representative of the business entity submits, at a City office designated by the City Attorney, a sworn affidavit stating that the violation has ended.

- (a) 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 of the unlawful workers related to the complaint.
  - (b) Where two or more of the unlawful workers were verified by the federal government to be unauthorized aliens, the legal representative of the business entity shall submit to the Valley Park Code Enforcement Office, in addition to the prescribed affidavit, documentation acceptable to the City Attorney which confirms that the business entity has enrolled in and will participate in the Basic Pilot Program for the duration of the validity of the business permit granted to the business entity.
- (7) For a second or subsequent violation, the Valley Park Code Enforcement Office shall suspend the business permit of a business entity for a period of twenty (20) days. After the end of the suspension period, and upon receipt of the prescribed affidavit, the Valley Park Code Enforcement Office shall reinstate the business permit. The Valley Park Code Enforcement Office shall forward the affidavit, complaint, and associated documents to the appropriate federal enforcement agency, pursuant to United States Code Title 8, section 1373. In the case of an unlawful worker disqualified by state law not related to immigration, the Valley Park Code Enforcement Office shall forward the affidavit, complaint, and associated documents to the appropriate state enforcement agency.
- C. All agencies of the City shall enroll and participate in the Basic Pilot Program.
  - D. As a condition for the award of any City contract or grant to a business entity for which the value of employment, labor or, personal services shall exceed \$10,000, the business entity shall provide documentation confirming its enrollment and participation in the Basic Pilot Program.

#### Section Five

#### **HARBORING ILLEGAL ALIENS**

- A. It is unlawful for any person or business entity that owns a dwelling unit in the City to harbor an illegal alien in the dwelling unit, knowing or in reckless disregard of the fact that an alien

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has come to, entered, or remains in the United States in violation of law, unless such harboring is otherwise expressly permitted by federal law.

- (1) 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.
- (2) 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 Valley Park Code Enforcement Office.
- (3) A separate violation of this section shall be deemed to have been committed for each business day on which the owner fails to provide the Valley Park Code Enforcement Office with identity data needed to obtain a federal verification of immigration status, beginning three (3) days after the owner receives written notice from the Valley Park Code Enforcement Office.

B. Enforcement: The Valley Park Code Enforcement Office shall enforce the requirements of this section.

- (1) An enforcement action shall be initiated by means of a written signed complaint to the Valley Park Code Enforcement Office submitted by any official, business entity, or resident of the City. A valid complaint shall include an allegation which describes the alleged violator(s) as well as the actions constituting the violation, and the date and location where such actions occurred.
- (2) 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.
- (3) Upon receipt of a valid written complaint, the Valley Park Code Enforcement Office shall, pursuant to United States Code Title 8, section 1373(c), verify with the federal government the immigration status of a person seeking to

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use, occupy, lease, or rent a dwelling unit in the City. The Valley Park Code Enforcement Office shall submit identity data required by the federal government to verify immigration status. The City shall forward identity data provided by the owner to the federal government, and shall provide the property owner with written confirmation of that verification.

- (4) If after five (5) 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 Valley Park Code Enforcement Office shall suspend the occupancy permit for the dwelling unit.
- (5) 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. In addition, the City of Valley Park shall not issue occupancy permits for any properties owned during the suspension period.
- (6) The denial or suspension shall terminate one (1) business day after a legal representative of the dwelling unit owner submits to the Valley Park Code Enforcement Office 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.
- (7) The Valley Park Code Enforcement Office shall forward the affidavit, complaint, and associated documents to the appropriate federal enforcement agency, pursuant to United States Code Title 8, section 1373.
- (8) Any dwelling unit owner who commits a second or subsequent violation of this section shall be subject to a fine of Two Hundred Fifty Dollars (\$250.00) for each separate violation. The suspension provisions of this section applicable to a first violation shall also apply.
- (9) Upon the request of a dwelling unit owner the Valley Park Code Enforcement Office shall, pursuant to United States Code Title 8, section 1373(c), verify with the federal

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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 dwelling unit occupants whose status as an alien lawfully present in the United States has been verified.

**Section Six**

**CONSTRUCTION AND SEVERABILITY**

- A. 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.
- B. If any parts of or any provision of this Chapter is in conflict or inconsistent with applicable provisions of federal or state statutes, or is otherwise held to be invalid or unenforceable by any court of competent jurisdiction, such part or such provision shall be suspended and superseded by such applicable laws or regulations, and the remainder of this Chapter shall not be affected thereby.

**Section Seven**

This Ordinance shall become effective from and after its passage and upon approval by the Mayor.

PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2006.

\_\_\_\_\_  
**JEFFERY J. WHITTEAKER, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**MARGUERITE WILBURN**  
City Clerk

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS  
STATE OF MISSOURI

**FILED**

SEP 25 2006

JOAN M. GILMER  
CIRCUIT CLERK, ST. LOUIS COUNTY

STEPHANIE REYNOLDS, FLORENCE )  
STREETER, JACQUELINE GRAY, and )  
THE METROPOLITAN ST. LOUIS )  
EQUAL HOUSING OPPORTUNITY )  
COUNSEL, INC., )

Plaintiffs, )

v. )

Cause No. 06-CC-3802

CITY OF VALLEY PARK, MO, )  
JEFFERY WHITTEAKER, in his official )  
capacity as Mayor of the City of )  
Valley Park, MO, and JOHN BRUST, )  
DANIEL ADAMS, RANDY HELTON, )  
DON CARROLL, MICHAEL PENNISE, )  
ED WALKER, STEVE DRAKE, and )  
J. MICHAEL WHITE, in their official )  
capacity as Aldermen of the City of )  
Valley Park, MO ))

Division No. 42

Defendants. )

**TEMPORARY RESTRAINING ORDER**

This cause came on for a hearing on Plaintiffs' Motion for a Temporary Restraining Order. Defendants received notice on Friday, September 22, 2006, by telephone, facsimile, and service of a copy of the Petition and Motion. Both Plaintiffs and Defendants appear by counsel. The Court has considered the Motion for a Temporary Restraining Order, the Memorandum in Support thereof, Plaintiffs' Petition for Injunctive and Declaratory Relief, and the arguments of counsel, and based thereon hereby Orders that Plaintiffs' Motion is **GRANTED**. The Court finds and concludes that:

1. Valley Park Ordinance No. 1708 is being enforced in the City of Valley Park, Missouri;

**EXHIBIT C**

2. Plaintiffs are likely to succeed on the merits of their claim that Ordinance No. 1708 is void to one or more of the following reasons: ~~(1) it usurps the exclusive federal authority to regulate immigration, and is thus preempted by federal law under the Supremacy Clause, U.S. Const., art. VI, cl. 2;~~ (2) it was enacted in excess of Valley Park's delegated authority, and is repugnant to the Missouri Constitution; (3) it is so vague and overbroad that it provides no notice of its own scope, therefore violating the state and federal constitutional right to due process; (4) it impairs existing contracts in violation of both the Missouri and United States Constitutions; (5) it impedes interstate commerce, and thus violates the Commerce Clause of the United States Constitution, art. I, § 8, cl. 3; ~~(6) it promotes discrimination in housing and hence violates, and is preempted by, the Fair Housing Act; and (7) it violates the constitutional guarantee of free speech set forth in the First Amendment to the United States Constitution.~~

3. Plaintiffs each have a protectable interest that has suffered and will continue to suffer irreparable injury by the enforcement of Ordinance No. 1708. Entry of a temporary restraining order is warranted to prevent this immediate and irreparable injury.

4. Defendants will suffer no harm by the entry of a temporary restraining order, and the public interest weighs in favor of entering one.

**ACCORDINGLY, THE COURT HEREBY ORDERS THAT:**

Defendants City of Valley Park, Missouri, Jeffery Whitteaker, John Brust, Daniel Adams, Randy Helton, Don Carroll, Michael Pennise, Ed Walker, Steve Drake, and J. Michael White are hereby enjoined from enforcing Ordinance No. 1708. This Order shall be binding upon Defendants and their agents, including any police officials operating in the City of Valley Park who are acting under contract with, or as agents of, that City.

It is further ORDERED that the bond required by Missouri Rule 92.02, shall be waived.

This Order shall remain in effect <sup>by consent Nov 1,</sup> ~~for fifteen days, i.e., through October~~ \_\_\_, 2006, unless extended in accordance with the Missouri Rules of Civil Procedure.

The hearing on Plaintiffs' Motion for a Preliminary Injunction is scheduled for <sup>Nov</sup> ~~October~~ 1, 2006.

*Bond @ \$250, personal check of counsel acceptable*

SO ORDERED this 25th day of September, 2006, at 4:00 p.m.:

*Barbara W. Wallace*  
\_\_\_\_\_  
Honorable ~~Sandra Farragut-Hemphill~~  
~~Associate~~ Circuit Judge *Barbara W. Wallace*