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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

ROY and MARY GARRETT;
ESCONDIDO HUMAN RIGHTS COMMITTEE;
JANE DOE 1;
JANE DOE 2,

Plaintiffs,

v.

CITY OF ESCONDIDO,
Defendant.

06CV 2434 - JAH NLS

- COMPLAINT FOR:
- 1) Violation of the Supremacy Clause;
 - 2) Violation of the Contracts Clause;
 - 3) Violation of the First Amendment and Art. I, §1 of the Calif. Constitution;
 - 4) Violation of Equal Protection;
 - 5) Violation of Procedural Due Process;
 - 6) Violation of 42 U.S.C. §1981;
 - 7) Violation of the Federal Fair Housing Act;
 - 8) Violation of Fair Employment and Housing Act, Calif. Gov. Code §12955, *et seq.*;
 - 9) Violation of Unruh Act, Calif. Civ. Code §§ 51 and 52;
 - 10) Violation of Legitimate Police Powers; and
 - 11) State Law Preemption

FILED

2005 NOV -3 AM 9: 21

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY _____ DEPUTY

1 Plaintiffs ROY and MARY GARRETT, ESCONDIDO HUMAN RIGHTS
2 COMMITTEE, and JANE DOES 1 and 2, all to the best of their knowledge, information, and
3 belief formed after an investigation reasonable under the circumstances, which facts are likely to
4 have evidentiary support after a reasonable opportunity for further investigation and discovery,
5 except for information identified herein based on personal knowledge, hereby allege as follows
6 against the above-named defendant:

7 **I. INTRODUCTION AND NATURE OF THE ACTION**

8 1. On October 18, 2006, the City of Escondido ("Escondido" or "City") passed
9 Ordinance No. 2006-38 R "Establishing Penalties For The Harboring of Illegal Aliens In The City
10 of Escondido" (the "Ordinance"). The Ordinance was patterned largely after portions of an
11 ordinance adopted in Hazelton, Pennsylvania on July 13, 2006 and subsequently amended, the
12 enforcement of which has been suspended by court order pending a federal lawsuit challenging
13 that ordinance on several constitutional grounds.

14 2. Purporting to blame ills such as crime and overcrowded neighborhoods on the
15 presence of what it calls "illegal aliens," Escondido passed the Ordinance with the express goal of
16 preventing landlords from allowing "illegal aliens" to occupy dwelling units. However, the data
17 on which Escondido purports to rely provide no support for the conclusion that immigrants, either
18 documented or undocumented, cause those ills.

19 3. The Ordinance sets forth a new municipal code violation described as "harboring
20 illegal aliens", and subjects landlords to significant penalties if they engage in "harboring" by
21 renting to an "illegal alien" or allowing an "illegal alien" to occupy a dwelling unit. The
22 Ordinance will have, and has already had, the effect of inducing landlords to deny housing to
23 persons on the basis of race or national origin. Under the Ordinance, anyone who looks or sounds
24 "foreign" – regardless of citizenship or immigration status – stands to be excluded from living in
25 Escondido.

26 4. The Ordinance is riddled with constitutional flaws and ignores the subtleties,
27 complexities and primacy of federal immigration law. The Ordinance infringes on the federal
28 government's authority over immigration in violation of the Supremacy Clause, not least because

1 it invades a field that is exclusively occupied by the federal government through Congress'
2 express regulation of, *inter alia*, "harboring" persons unlawfully present in the United States
3 pursuant to 8 U.S.C. §1324(a).

4 5. The Ordinance violates the constitutional rights of landlords by placing them in the
5 impossible position of either violating the Ordinance and facing Draconian penalties or risking
6 violation of federal and state laws if they comply with the Ordinance. It also violates due process
7 by failing to require adequate proof before the City designates a tenant as an "illegal alien,"
8 failing to provide adequate procedures for landlords or tenants to contest such designation before
9 the City imposes severe sanctions for alleged "harboring," and by imposing sanctions on
10 landlords for alleged "harboring" before it is possible to correct any such violation in compliance
11 with state law.

12 6. The Ordinance contemplates state action based on race and national origin, in
13 violation of the Constitutional guarantee of equal protection.

14 7. Because the people most likely to lose their housing as a result of the Ordinance
15 are Latinos – who as of 2004 comprise approximately 42% percent of the City's population – the
16 Ordinance will have a disproportionate adverse impact on Latinos and other minority
17 communities and will tend to have a segregative effect on the City of Escondido, in violation of
18 multiple state and federal laws, including but not limited to, federal and state fair housing and
19 anti-discrimination laws.

20 8. The Ordinance is also preempted by the California Constitution and other state
21 law, which mandate that non-citizens shall have the same property rights as citizens. By giving
22 landlords only 10 business days to evict an alleged "illegal alien" tenant, the Ordinance directly
23 conflicts with state law controlling eviction proceedings and for cancelling an existing tenancy.
24 By imposing a new basis for commencing eviction proceedings – being an "illegal alien" – not
25 contained in state law, the Ordinance invades the state law function of determining what
26 constitutes grounds for eviction or refusal to continue a tenancy relationship, and the timing
27 thereof.

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1 9. Through this Complaint, plaintiffs ask this Court for the entry of judgment
2 declaring that the Ordinance is unconstitutional and unlawful, equitable relief in the form of a
3 permanent injunction against the enforcement of the Ordinance, statutory and exemplary
4 damages, and costs and attorneys' fees.

5 **II. JURISDICTION AND VENUE**

6 10. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 over
7 plaintiffs' causes of action under the Constitution of the United States, 42 U.S.C. §§ 1981 and
8 1983, the Fair Housing Act, 42 U.S.C. §3601 *et seq.*, and the Declaratory Judgment Act, 28
9 U.S.C. §§ 2201 and 2202. This Court has supplemental jurisdiction over plaintiffs' causes of
10 action under California law pursuant to 28 U.S.C. §1367.

11 11. This Court has personal jurisdiction over defendant, which is located in the
12 Southern District of California.

13 12. Venue is proper in the Southern District of California pursuant to 28 U.S.C.
14 §1391(a) in that Escondido is subject to personal jurisdiction within the Southern District of
15 California, and the events which give rise to this action occurred within the Southern District of
16 California.

17 **III. PARTIES**

18 13. On personal knowledge, plaintiffs Roy and Mary Garrett (the "Garretts") are
19 husband and wife and own multiple rental units in trust in the City of Escondido ("Landlord
20 Plaintiffs").

21 14. The Landlord Plaintiffs receive substantial rental income from such dwelling units.
22 The Landlord Plaintiffs do not know the immigration status of their present tenants, nor are they
23 capable of making such a determination, nor as a matter of policy do they have any intention of
24 inquiring into the immigration status of their tenants or tenant applicants. Nor do they have any
25 intention of gathering any identity data required under the Ordinance to obtain a federal
26 verification of immigration status of tenants and share such private information with Escondido –
27 even if they could determine what the necessary private data would be, even if federal verification
28 of immigration status could be obtained by the City, and even though they are under fear of

1 criminal and civil sanctions if they do not comply with the Ordinance. They rent their dwelling
2 units pursuant to written lease agreements that expressly state the terms and conditions under
3 which they can evict a tenant or terminate a tenancy. Their lease agreements do not provide that
4 they can evict any tenant on the ground they are an "illegal alien" within 10 business days.

5 15. The Landlord Plaintiffs know their tenants are visited by guests and family
6 members. They have no reasonable mechanism available to determine whether through such
7 visitations they are "suffering" or "permitting" their rented premises to be "occupied" by persons
8 who are defined to be "illegal aliens" under the Ordinance, and whether they could be punished or
9 sanctioned by the City under the Ordinance as a result.

10 16. The Landlord Plaintiffs have a well-founded fear that the Ordinance will be
11 enforced against them and that they will suffer substantial adverse consequences as a result if the
12 Ordinance is not declared invalid and enjoined. Unless the Ordinance is permanently enjoined
13 and declared invalid, the Landlord Plaintiffs are subject to irreparable harm by, *inter alia*, being
14 subject to significant monetary fines for violating the Ordinance, losing and/or being refused
15 business permits or licenses, being unable to collect rent on any of their rental units, and facing
16 criminal misdemeanor liability for multiple violations since a separate violation occurs under the
17 Ordinance for every day that an "illegal alien" tenant or occupant remains in a dwelling unit after
18 notice from Escondido that the specified time has passed to "correct the violation."

19 17. Unless the Ordinance is permanently enjoined and declared invalid, the Landlord
20 Plaintiffs may also be exposed to the imminent threat of irreparable harm for which there is no
21 adequate remedy at law in terms of personal liability if, in attempting to comply with the
22 Ordinance, they take adverse action against an individual whom the City claims may be an
23 "illegal alien" under the Ordinance, where such action is prohibited by state or federal law.

24 18. The following plaintiffs ("Tenant Plaintiffs") rent dwelling units in Escondido
25 under otherwise valid and binding leases and have a well-founded fear that they would be
26 classified as "illegal aliens" under the Ordinance:

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1 a. On personal knowledge, plaintiff Jane Doe 1 came to the United States from
2 Mexico in or about 1994. She has minor children who are United States citizens.
3 She rents an apartment in Escondido, which she has occupied continuously since
4 2001. Her children, who are U.S. citizens, live with her and attend school in
5 Escondido. She is gainfully employed.

6 b. On personal knowledge, plaintiff Jane Doe 2 came to the United States from
7 Mexico in or about January 1987. She has three minor children who are United
8 States citizens. She rents an apartment in Escondido, which she has occupied
9 continuously since February 1996. Her minor children, who are U.S. citizens, live
10 with her and attend school in Escondido. She is gainfully employed.

11 If the Ordinance is not declared invalid and permanently enjoined, enforcement of the Ordinance
12 will pose an imminent threat of irreparable harm to the Tenant Plaintiffs and/or members of their
13 families for which there is no adequate remedy at law by subjecting them to, *inter alia*, the threat
14 of eviction from their homes and the inability to locate local substitute housing or for their U.S.
15 citizen children to attend school in Escondido.

16 19. The Landlord Plaintiffs seek to provide housing, or continue to provide housing, to
17 persons without regard to the Ordinance. The Tenant Plaintiffs seek to remain in occupancy and
18 quiet enjoyment of their dwelling units in Escondido that they have leased and occupied for years.
19 Both Landlord Plaintiffs and Tenant Plaintiffs seek to continue receiving the benefits of pre-
20 existing contract and property rights. If not declared invalid and permanently enjoined, the
21 Ordinance will adversely impact both Landlord Plaintiffs and Tenant Plaintiffs in their ability to
22 pursue such objectives.

23 20. On personal knowledge, plaintiff Escondido Human Rights Committee ("EHRC")
24 is a California unincorporated association.

25 21. EHRC's primary purpose is to advocate for the human rights of all persons in
26 Escondido, educate the Escondido community regarding human rights, and document human
27 rights violations in Escondido.

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1 22. EHRC does not require its members to prove their citizenship, residency or
2 immigration status as a condition to membership. The Ordinance has created great hostility
3 towards the Latino community in Escondido and therefore adversely affects the work and mission
4 the organization follows and performs in Escondido and for Escondido residents. EHRC has
5 received numerous reports from its members and other Escondido residents that they have been
6 subjected to discrimination due to the adoption of the Ordinance, as some landlords are
7 demanding proof of citizenship or demanding tenants leave the premises in fear the landlords may
8 be found to violate the Ordinance.

9 23. The interests EHRC seeks to protect through this action are germane to its
10 purpose, and neither the claims asserted nor the relief requested herein require the personal
11 participation of EHRC's members.

12 24. As a result of the proposal, debate, and enactment of the Ordinance, EHRC has
13 diverted and expended, and will continue to divert and expend, its own resources from other
14 activities to educate the public regarding the Ordinance, advocate against enactment and
15 enforcement of the Ordinance, provide assistance to community members impacted by the
16 Ordinance, and respond to concerns and questions from community members regarding the
17 Ordinance.

18 25. Defendant City of Escondido ("Escondido" or "City") is a city existing pursuant to
19 California law, with its principal location at Escondido City Hall, 201 North Broadway,
20 Escondido, San Diego County, California.

21 26. At all relevant times described herein, Escondido adopted the Ordinance acting
22 through its duly authorized agents, Mayor Lori Holt Pfeiler, Ed Gallo, Mayor Pro Tem, and City
23 Council members Ron Newman, Marie Waldron and Sam Abed.

24 27. At all times alleged herein, Escondido and its officials, employees and agents were
25 acting under color of state law.

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IV. STATEMENT OF FACTS

A. The Ordinance

28. On August 16, 2006, at an Escondido City Council meeting, Councilmember Waldron introduced the concept of adopting the proposed Ordinance to the Escondido City Council. After discussing the issue, the City Council directed City staff to prepare an ordinance and/or policies "to regulate overcrowding, renting to illegal aliens, and on-street parking restrictions." The only one of these issues addressed by the City Attorney's Office was renting to illegal aliens or, in the words of the Ordinance, "harboring illegal aliens."

29. Council member Waldron proposed the Ordinance amid a passionate national debate over federal immigration policy at the very time the United States Congress was holding hearings across the country regarding competing bills to amend federal immigration law and addressing, *inter alia*, whether and how the federal statute governing the harboring of illegal aliens should be amended.

30. On October 4, 2006, after receiving a several page analysis prepared by the City Attorney, the Escondido City Council by a 3-2 vote approved the Ordinance at first reading, with minor amendments. On October 18, 2006, an amended version of the Ordinance received one more reading before the City Council. At the second reading, the City Council adopted the Ordinance, also by a 3-2 vote. A true and correct copy of the Ordinance is attached hereto as Exhibit "A" and incorporated herein by this reference.

31. Unless enjoined, the Ordinance will go into effect on November 17, 2006, 30 days after its second reading.

32. Any of the following activities would result in a violation of the Ordinance, if done with "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) to "let, lease or rent a dwelling unit to an illegal alien";

(b) to "suffer or permit the occupancy of the dwelling unit by an illegal alien";

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- 1 (c) within five business days after receiving written notice from the City demanding
- 2 whatever information it asserts is necessary to comply with this demand, to fail "to
- 3 provide the City with identity data needed to obtain a federal verification of
- 4 immigration status" of a tenant;
- 5 (d) within 10 business days after receiving written notice from the City of a violation,
- 6 to fail to correct the violation.

7 Further, should a landlord actually remove an "illegal alien" from a rental property, the denial or
8 suspension of the landlord's business permit continues until one day after the landlord (or a
9 representative thereof) submits an affidavit to the City not only confirming that the violation has
10 ended, but also including the new "address and other adequate identifying information for the
11 illegal aliens who were the subject of the complaint." Providing such information will likely
12 prompt another round of charges until the "illegal alien" moves out of Escondido.

13 33. As written, the Ordinance only applies to landlords subject to §16-17 of the
14 Escondido Municipal Code, not homeowners. It requires landlords to evict tenants upon written
15 notice from the City that an "illegal alien" is renting or staying in one of their rental properties.

16 34. The Ordinance would deny or suspend the Escondido business license of a rental
17 property owner who is alleged to be in violation of the Ordinance, without any hearing prior to
18 such denial or suspension. This denial or suspension would preclude the owner from collecting
19 any rent, payment, fee, or any other form of compensation from any dwelling unit owned by the
20 landlord in Escondido. More than one violation – which as defined in the statute would result
21 from not taking action more than one day after required to do so under the terms of the Ordinance
22 (since each day that passes and each alien "harbored" constitutes a separate violation) – would
23 result in a monetary penalty of up to \$1,000.00 per violation per day, or a jail term of six months,
24 or both.

25 35. The Ordinance does not provide any pre-determination hearing for a landlord prior
26 to the suspension of their business license. The Ordinance also does not provide a tenant or
27 subtenant that the City believes is an "illegal alien" any notice or opportunity to be heard as to
28 their right to present in the United States.

1 **B. Intent and Effect of the Ordinance**

2 36. The intent and effect of the Ordinance is to regulate immigration in Escondido and
3 the United States in a manner not contemplated or approved by the federal government.

4 37. The Ordinance defines a group of individuals as “illegal aliens” and sets forth an
5 unfathomable scheme intended to eliminate this group of individuals from Escondido by
6 forbidding them from renting or occupying rental property and converting landlords into a posse
7 compelled to enforce the law, all with the intent and effect of forcing immigrants to leave the city
8 based on the allegedly “valid complaint” of any person – government officials, a disgruntled
9 neighbor, persons with their own political agenda who have already expressed an intent to be
10 vigilante reporters, or even a landlord that wishes to get rid of a tenant subject to a valid lease
11 agreement.

12 38. If the Ordinance is allowed to go into effect and be enforced, it may be difficult if
13 not impossible for anyone who is perceived to possibly be an “illegal alien” as defined by the
14 Ordinance to rent or occupy a dwelling unit in Escondido, because landlords may elect to avoid
15 the burden of compliance with the Ordinance and the risk of noncompliance by refusing to enter
16 into leases with anyone whom they perceive as likely to be an “illegal alien” under the Ordinance.

17 39. Escondido based the Ordinance on findings that “the harboring of illegal aliens in
18 dwelling units in the City, and crime committed by illegal aliens, harm the health, safety and
19 welfare of legal residents in the City.” The City based this conclusion on the findings of a June
20 2006 study by the National Latino Research Center at California State University San Marcos
21 addressing housing conditions in the Mission Park area of Escondido (the “San Marcos Study”).

22 40. The San Marcos Study does not support the City’s finding that increased crime,
23 overcrowding and harm to health, safety and welfare are linked to “illegal aliens” dwelling in
24 rental property in Escondido. In fact, the San Marcos Study found that the causes for
25 overcrowding were due to the high costs of housing and the unavailability of affordable
26 subsidized housing in Escondido – not the presence of an “illegal alien” population. Escondido
27 therefore misrepresented the conclusion of this study to justify its own desires, contradicting what
28 the San Marcos Study actually found.

1 41. Council member Waldron – the driving force behind the Ordinance – likened
2 undocumented immigrants to terrorists and linked them with her perception of a general
3 deterioration of American values in trying to garner support for the Ordinance. “To look the
4 other way is treasonous,” according to member Waldron. In addition, in response to a Council
5 member’s suggestion that the revenues and costs associated with enforcing the Ordinance be
6 tracked, several Council members (including Council member Waldron) stated that was only
7 acceptable if the City also tracked the local costs associated with illegal immigration generally.

8 42. The Ordinance would compel persons who own rental property in Escondido to
9 disclose unspecified “identity data” on their tenants to the City, solely on the basis of an unsworn
10 and unverified complaint to the City, even if the owners have no reason to believe that their
11 tenants may be “illegal aliens” under the Ordinance, and even if the information they possess is
12 protected from disclosure under state and federal law. The Ordinance thus exposes rental
13 property owners to a well-founded fear of civil or criminal liability for violation of state and
14 federal laws prohibiting disclosure of tenants’ private information.

15 43. The Ordinance does not define the term “illegal alien” other than making a general
16 reference to the federal immigration laws, which includes very complex definitions for
17 “immigrants” but no definition of “illegal alien.” The Ordinance makes such a determination by
18 asking the federal government to verify the legal status of a tenant, but the federal government
19 may not (or cannot) provide that verification to the City. Landlord Plaintiffs and others will have
20 to guess at the immigration status of persons who might fall into this category, based upon
21 improper gauges such as color of skin and foreign accents.

22 44. The Ordinance actually invites such speculation: only “a complaint which alleges a
23 violation *solely or primarily* on the basis of national origin, ethnicity, or race shall be deemed
24 invalid” (emphasis added), whereas those based partially on such characteristics and stereotypes –
25 which bear no relevance to a person’s immigration status – will presumably be deemed valid.

26 45. Persons who lack such official documents such as a U.S. birth certificate, passport
27 or current visa, but who are lawfully permitted to reside and work in the United States, may be
28 deemed “illegal aliens” due to the inability of City officials and property owners to accurately

1 identify and interpret specialized immigration documents, and due to the Ordinance's lack of any
2 procedure providing for notice or an opportunity to be heard. There is also no indication what
3 level of information would be necessary to "verify" such status, particularly if the information to
4 be provided is protected from disclosure under federal and state privacy laws and cannot be
5 shared with the City.

6 46. The Ordinance requires the immediate suspension of business permits to anyone
7 who "harbors illegal aliens." Yet, the Ordinance fails to specify the precise conduct that
8 constitutes "harboring". For example, is "harboring" just the act of renting a dwelling unit?
9 Could it be the mere presence and occupancy of a guest? What if one of the tenants is a lawful
10 immigrant or even a U.S. citizen (such as a minor) and one is not? What happens if the landlord
11 is informed the tenant or occupant is an illegal immigrant - must he or she immediately
12 commence eviction proceedings under the Ordinance and, if so, on what ground under California
13 law, and must he or she independently verify this fact? The Ordinance does not say.

14 47. Moreover, if a demand for information is received from the City, but for whatever
15 reason such information cannot be provided to the City within five business days, the landlord
16 would be considered in violation of the Ordinance even if nothing can be done by the landlord to
17 obtain such information either voluntarily or involuntarily. What is a landlord to do if a tenant or
18 occupant simply refuses to provide the landlord such information, or is out of town on business or
19 a vacation? What if the landlord only has a California driver's license from the tenant, or
20 information protected from disclosure under the Fair Credit Reporting Act? And if the landlord is
21 presented with some form of documentation indicating the tenant is not an "illegal alien" but the
22 federal government does not confirm that fact, is the tenant presumptively guilty and the landlord
23 violating the statute unless he or she evicts the tenant in 10 days, irrespective of the requirements
24 of California's landlord-tenant laws? And what if the federal government either cannot or will
25 not provide verifying information to the City? The Ordinance leaves these threshold questions
26 unanswered.

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1 C. **Federal Preemption**

2 48. The power to regulate immigration is undeniably exclusively federal and derives
3 from the constitutional grant of power to Congress to “establish a uniform Rule of
4 Naturalization,” U.S. Const. Art. I, § 8, cl. 4., and to “regulate Commerce with foreign Nations.”
5 *Id.*, cl. 3. In addition, the U.S. Supreme Court has held that the federal government's power to
6 control immigration is inherent in the nation's sovereignty.

7 49. Pursuant to its exclusive power over matters of immigration, the federal
8 government has established a comprehensive system of laws, regulations, procedures, and
9 administrative agencies that determine, subject to administrative and judicial review, whether and
10 under what conditions a given individual may enter, stay in, and work in the United States.

11 50. In addition to provisions that directly regulate immigrants' entry and behavior, the
12 federal immigration laws also include provisions directed at other classes of individuals,
13 including those who harbor individuals not lawfully in the United States.

14 51. The federal government has also chosen to allow certain categories of non-
15 citizens, and certain individual non-citizens, to remain in the United States, even though such
16 non-citizens may not have valid immigrant (permanent) or non-immigrant (temporary) status
17 and/or may be removable under the federal Immigration and Nationality Act (“INA”).

18 52. These laws, procedures, and policies created by the federal government regulate
19 immigration and confer rights in a careful balance reflecting the national interest, and have been
20 found to preempt any contrary state laws.

21 53. In addition, a final determination that a tenant is or is not an “illegal alien” is to be
22 made by the City under the Ordinance solely by attempting to ascertain from the United States
23 Citizen and Immigration Service (“USCIS”), pursuant to 8 U.S.C. §1373(c), whether the reported
24 tenant is an alien who is not lawfully present in the United States. However, that is not how a
25 determination of legal status is finally made by the federal government, and the federal
26 immigration system does not produce a final determination of immigrant status at the request of a
27 local government.

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1 54. Due to the Ordinance's definition of "illegal alien" and the lack of procedural
2 safeguards, some persons who are permitted by the federal government to live and/or work in the
3 United States will nevertheless be effectively barred from residing in Escondido.

4 55. The Ordinance is preempted by federal law because it is an impermissible attempt
5 to regulate immigration and because it conflicts with and interferes with Congress'
6 comprehensive scheme of immigration regulation.

7 **D. Discriminatory Impact of Ordinance**

8 56. The Ordinance has a disproportionate discriminatory impact on the local Latino
9 community, which constitutes approximately 42% of the City population. Landlords likely will
10 focus their attention on people who look or sound Latino, rather than any prospective or actual
11 tenant who may be an undocumented person.

12 57. In addition, contrary to popular belief, the majority of the undocumented
13 population is part of a mixed-status family, with a significant percentage (over 25%) having
14 children who are U.S. citizens and who have a right to live wherever they want to and go to
15 school wherever they choose. The effect of the Ordinance is to punish such U.S. citizens and
16 deprive them of their right to access the housing and schools of their choice, in violation of both
17 federal and state law.

18 58. Prior to the filing of this action, plaintiffs made a formal demand of defendants to
19 suspend or repeal the enactment of this Ordinance. Such demand has been refused. Thus, this
20 action is the only method available to obtain the requested relief.

21 **V. CAUSES OF ACTION**

22 **FIRST CAUSE OF ACTION**

23 **(VIOLATION OF THE SUPREMACY CLAUSE)**

24 59. Plaintiffs incorporate by reference the allegations of paragraphs 1 to 58 above as
25 though set forth herein.

26 60. Article VI, Section 2, of the United States Constitution provides:

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1 This Constitution, and the Laws of the United States which shall be
2 made in Pursuance thereof; and all Treaties made, or which shall be
3 made, under the Authority of the United States, shall be the
4 supreme Law of the Land; and the Judges in every State shall be
5 bound thereby, any Thing in the Constitution of Laws of any State
6 to the Contrary notwithstanding.

7 61. The Supremacy Clause mandates that federal law preempts any state regulation of
8 any matter over which Congress has expressly or impliedly exercised exclusive authority or
9 which is constitutionally reserved to the federal government.

10 62. The power to regulate immigration is a matter over which the federal government
11 has exclusive authority.

12 63. The Ordinance, in its entirety, is a law purporting to regulate immigration and the
13 incidents thereof by focusing exclusively on preventing the "harboring" of "illegal aliens." This
14 issue is specifically regulated by the federal government pursuant to, *inter alia*, 8 U.S.C. §
15 1324(a), which is part of the federal government's comprehensive statutory and regulatory
16 scheme governing immigration.

17 64. The Ordinance attempts to usurp the federal government's exclusive power over
18 immigration and naturalization and its power to regulate foreign affairs.

19 65. The Ordinance is preempted because its regulatory scheme attempts to legislate
20 in fields occupied by the federal government.

21 66. The Ordinance threatens the uniformity and primacy of the federal immigration
22 system and conflicts with federal immigration law.

23 67. The Ordinance thus violates the Supremacy Clause, on its face or as applied.

24 68. Therefore, plaintiffs are entitled to declaratory and injunctive relief.

25 **SECOND CAUSE OF ACTION**

26 **(VIOLATION OF THE CONTRACTS CLAUSE)**

27 69. Plaintiffs incorporate by reference the allegations of paragraphs 1 to 68 above as
28 though set forth herein.

70. The Contracts Clause of the United States Constitution provides that no state shall
pass a "law impairing the obligation of contracts." (U.S. Const. art. I, § 10, cl. 1). This article

1 prohibits States from enacting laws that retroactively impair contractual obligations. The
2 California Constitution has a similar provision in the California Constitution, Art. I, §9.

3 71. Sections 16E-1 and 16E-2 of the Ordinance make it unlawful for any landlord to
4 knowingly, or in reckless disregard of the fact, harbor an "illegal alien," and mandates landlords
5 evict any "illegal alien" within 10 business days after receipt of a notice of violation from the City
6 to avoid the denial or suspension of their business licenses and the imposition of additional
7 penalties.

8 72. Further, if a landlord is unsuccessful in evicting the tenant or occupant within 10
9 business days, under §16E-2 of the Ordinance, the landlord's business license is denied or
10 suspended and the landlord is not permitted to collect any rent, payment, fee, or another form of
11 compensation from, or on behalf of, any tenant or occupant in the dwelling (or any other dwelling
12 covered by the landlord's business license) until the landlord is no longer in violation of the
13 Ordinance, i.e., has evicted the tenant.

14 73. For the reasons set forth herein, the Ordinance fails to have a significant and
15 legitimate public purpose.

16 74. For the reasons set forth herein, the Ordinance is not based upon reasonable
17 conditions and is not of a character appropriate to the stated public purpose.

18 75. The Landlord and Tenant Plaintiffs have valid lease and rental agreements for
19 residential rental property in the City of Escondido. Each lease or rental agreement has specific
20 provisions that specify the grounds upon which a landlord may evict or prematurely terminate the
21 agreement. None of these leases or agreements allow a landlord to evict tenants based upon
22 "harboring of illegal aliens" or the fact the tenant is an "illegal alien".

23 76. The eviction of a tenant or occupant within ten business days, under conditions not
24 specified in lease agreements, would cause Landlord Plaintiffs and others to breach those
25 agreements, and also deprives the Tenant Plaintiffs of their contractual rights to occupancy and
26 quiet enjoyment of their leased dwelling units. Therefore, the Ordinance violates the Contracts
27 Clause of the United States and California Constitutions.

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1 84. The Ordinance will have the effect of chilling speech between landlords and
2 tenants, for fear that learning too much information would potentially expose the landlord to
3 liability if such information became available or was demanded by the City.

4 85. The City does not have a compelling, or even rational, state interest to require such
5 speech. The Ordinance is not narrowly tailored to justify the requirements for compelling such
6 speech. The Ordinance's provisions overall serve no substantial local governmental interest and
7 are not narrowly tailored to affect state interests.

8 86. Therefore, plaintiffs are entitled to declaratory and injunctive relief.

9 **FOURTH CAUSE OF ACTION**

10 **(VIOLATION OF EQUAL PROTECTION)**

11 87. Plaintiffs incorporate by reference the allegations of paragraphs 1 to 86 above as
12 though set forth herein.

13 88. The Ordinance provides that only "a complaint which alleges a violation *solely or*
14 *primarily* on the basis of national origin, ethnicity, or race shall be deemed invalid" (emphasis
15 added), but permits enforcement of complaints – and denial of housing – based in part on national
16 origin, ethnicity, or race.

17 89. The Ordinance also impermissibly discriminates between homeowners not subject
18 to §16-17 of the Escondido Municipal Code who "harbor illegal aliens" and landlords subject to
19 §16-17 who rent or lease to "illegal aliens" or have tenants who "harbor illegal aliens."

20 90. The Ordinance is thus invalid under the Equal Protection Clause of the Fourteenth
21 Amendment to the United States Constitution.

22 91. Therefore, plaintiffs are entitled to declaratory and injunctive relief.

23 **FIFTH CAUSE OF ACTION**

24 **(VIOLATION OF PROCEDURAL DUE PROCESS)**

25 92. Plaintiffs incorporate by reference the allegations of paragraphs 1 to 91 above as
26 though set forth herein.

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1 93. The Due Process Clause of the Fourteenth Amendment to the United States
2 Constitution prohibits Escondido from depriving any person of life, liberty, or process without
3 due process of law.

4 94. Landlord Plaintiffs have a liberty and/or property interest in leasing their rental
5 dwelling units and receiving income from such leases.

6 95. The Ordinance deprives Landlord Plaintiffs of such interests without due process
7 of law because it is impossible for them to comply with the Ordinance without violating state and
8 federal law, including, but not necessarily limited to, state and federal laws prohibiting disclosure
9 of tenants' private information and state laws concerning terminating tenancies, eviction and
10 unlawful detainer proceedings.

11 96. The Ordinance also requires that upon written notice by the City that a violation
12 has occurred, Landlord Plaintiffs must within 10 business days: (1) provide notice to vacate the
13 premises; (2) institute an unlawful detainer action; (3) prevail in that action; (4) evict the "illegal
14 alien"; and (5) provide a sworn affidavit not only that the violation has ended, but also the new
15 "address and other adequate identifying information for the illegal alien" so that such information
16 can be forwarded to federal authorities.

17 97. The Ordinance does not require the City to sustain any burden to prove by
18 sufficiently probative evidence that a property owner is in fact renting a dwelling unit to an
19 alleged "illegal alien" before the City deprives the owner of liberty and/or property interests.

20 98. The Ordinance permits the City to suspend a property owner's business license,
21 and thus deprive the owner of the liberty and/or property interest in retaining such license,
22 conducting a rental property business, and/or receiving income from rental property, without any
23 hearing or proceedings before such suspension and deprivation occurs.

24 99. The Ordinance also provides no due process within its statutory scheme for any
25 person alleged to be an "illegal alien" to challenge such a designation.

26 100. The Ordinance has no relation to any legitimate local government purpose.
27 Escondido does not have any compelling state interest or rational basis for its enactment.

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1 101. As a result, the Ordinance, on its face or as applied, violates the Due Process
2 Clause of the Fourteenth Amendment.

3 102. Therefore, plaintiffs are entitled to declaratory and injunctive relief.

4 **SIXTH CAUSE OF ACTION**
5 **(VIOLATION OF 42 U.S.C. § 1981)**

6 103. Plaintiffs incorporate by reference the allegations of paragraphs 1 to 102 above as
7 though set forth herein.

8 104. The fundamental right to contract and to full and equal benefit of all laws is
9 codified under 42 U.S.C. §1981, as amended by Section 101 of the Civil Rights Act of 1991.

10 105. Pursuant to 42 U.S.C. §1981, “[a]ll persons within the jurisdiction of the United
11 States shall have the same right in every State and Territory to make and enforce contracts, to sue,
12 be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the
13 security of persons and property as is enjoyed by white citizens, and shall be subject to like
14 punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.”

15 106. Section 1981 prohibits discrimination under the color of law based on alienage and
16 race.

17 107. Congress deliberately used “all persons” instead of “citizens” in order to reflect the
18 language of the Fourteenth Amendment that extended the guarantee of equal protection under the
19 laws to “any person within the jurisdiction of the United States.”

20 108. Plaintiffs are entitled to the protections and benefits afforded by Section 1981,
21 including Plaintiffs categorized as “illegal aliens” under the Ordinance.

22 109. Sections 16E-1 and 16E-2 of the Ordinance seek to proscribe the execution of
23 contracts with “illegal aliens,” or the collection of rents, even owed by tenants who are lawfully
24 in the United States, if a landlord fails to evict a tenant or occupant he or she is told is an “illegal
25 alien.”

26 110. By enacting the Ordinance, Escondido has violated plaintiffs’ fundamental right to
27 contract on an equal basis.

28 111. Therefore, plaintiffs are entitled to declaratory and injunctive relief.

SEVENTH CAUSE OF ACTION

(VIOLATION OF THE FEDERAL FAIR HOUSING ACT)

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112. Plaintiffs incorporate by reference the allegations of paragraphs 1 to 111 above as though set forth herein.

113. The Fair Housing Act ("FHA"), 42 U.S.C. §3601 *et seq.*, prohibits housing practices that discriminate on the basis of race, color, religion, sex, familial status, national origin, or handicap.

114. Sections 16E-1 and 16E-2 of the Ordinance impose fines on the Landlord Plaintiffs and other property owners who rent to "illegal aliens" at up to \$1,000 per day per violation, with no stated maximum cap on the amount of the monetary penalty, possible jail time, and automatic deprivation of the right to collect any monies from any tenants due to the automatic suspension of the property owner's license, even from tenants who are lawfully in the United States. Some landlords are also discriminatorily demanding some tenants vacate their units for fear of violating the Ordinance.

115. Defendant injured plaintiffs and threatened them with injury in violation of the FHA by committing the following discriminatory housing practices:

- a. To otherwise make unavailable or deny a dwelling because of race, color, or national origin, in violation of 42 U.S.C. §3604(a);
- b. To discriminate against any person in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities therewith, because of race, color, or national origin, in violation of 42 U.S.C. §3604(b);
- c. To make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement, with respect to rental of a dwelling, that indicates any preference, limitation, or discrimination, based on race, color, or national origin, or an intention to make any such preference, limitation, or discrimination, in violation of 42 U.S.C. §3604(c); and

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1 d. To coerce, intimidate, threaten or interfere with any person in the exercise or
2 enjoyment of, or on account of his having exercised or enjoyed, any of the rights
3 granted by the FHA, in violation of 42 U.S.C. §3617.

4 116. In addition, 42 U.S.C. §3615 provides:

5 "Nothing in this subchapter shall be construed to invalidate or limit any
6 law of a State or political subdivision of a State, or of any other
7 jurisdiction in which this subchapter shall be effective, that grants,
8 guarantees, or protects the same rights as are granted by this subchapter;
9 *but any 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.*" (Emphasis added.)

10 117. Therefore, plaintiffs are entitled to declaratory and injunctive relief.

11 **EIGHTH CAUSE OF ACTION**

12 **(VIOLATION OF FAIR EMPLOYMENT AND HOUSING ACT, CALIFORNIA**
13 **GOVERNMENT CODE § 12955 ET SEQ.)**

14 118. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
15 through 117 above as though set forth herein.

16 119. Defendants injured Plaintiffs in violation of the California Fair Employment and
17 Housing Act, Cal. Gov. Code §12955, *et seq.* by committing the following discriminatory
18 housing practices:

19 a. To make, print or publish, or cause to be made, printed or published any notice,
20 statement or advertisement, with respect to rental of a dwelling, that indicates any
21 preference, limitation, or discrimination, based on race, color, ancestry, or national
22 origin, or an intention to make any such preference, limitation, or discrimination,
23 in violation of Civil Code §12955(c);

24 b. To discriminate against any person in the provision of housing accommodations,
25 in violation of the Unruh Civil Rights Act, Civil Code §51, *et seq.*, on the basis of
26 race, color, ancestry, or national origin, or other prohibited basis, in violation of
27 Civil Code §12955(d);

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- 1 c. To aid, abet, incite, compel, or coerce the doing of any of the acts or practices
- 2 declared unlawful under Civil Code §12955, in violation of Civil Code §12955(g);
- 3 d. To otherwise make unavailable or deny a dwelling based on discrimination
- 4 because of race, color, ancestry, or national origin, in violation of Civil Code
- 5 §12955(k);
- 6 e. To discriminate through public or private land use practices, decisions, and
- 7 authorizations because of race, color, ancestry, or national origin, in violation of
- 8 Civil Code §12955(i); and
- 9 f. To coerce, intimidate, threaten or interfere with any person in the exercise or
- 10 enjoyment of, or on account of his having exercised or enjoyed, any of the rights
- 11 granted by the Fair Employment and Housing Act, in violation of Civil Code
- 12 §12955.7.

13 120: Therefore, plaintiffs are entitled to declaratory and injunctive relief.

14 **NINTH CAUSE OF ACTION**

15 **(VIOLATION OF UNRUH ACT, CALIFORNIA CIVIL CODE §§ 51 AND 52, ET SEQ.)**

16 121. Plaintiffs incorporate by reference the allegations contained in paragraphs 1

17 through 120 above as though set forth herein.

18 122. Defendants violated the Unruh Civil Rights Act, California Civil Code §51 *et seq.*,

19 by adopting an Ordinance that has the effect of discriminating against persons as a result of their

20 race, color, ancestry or national origin.

21 123. The conduct of defendant alleged herein constitutes a denial of full and equal

22 access to housing accommodations to persons within the meaning of California Civil Code §51.

23 124. In addition, by virtue of the adoption of the Ordinance, defendant under color of

24 law has interfered by threats, intimidation or coercion with the exercise or enjoyment by plaintiffs

25 of rights secured by the Constitution of the United States and of California, as well as the laws of

26 the United States and the State of California, including rights to free speech, privacy, contract,

27 due process and the processes set forth in the California Civil Code and California Code of Civil

28 Procedure as set forth herein.

1 25. Pursuant to the Unruh Act and Civil Code §52.1(b), plaintiffs are therefore entitled
2 to statutory damages of either \$4,000 or \$25,000 per violation, and exemplary damages as
3 determined by the trier of fact, against defendant, as well as injunctive and declaratory relief.

4 **TENTH CAUSE OF ACTION**

5 **(VIOLATION OF LEGITIMATE POLICE POWERS)**

6 26. Plaintiffs incorporate by reference the allegations of paragraphs 1 to 125 above as
7 though set forth herein.

8 27. Article XI, §7 of the California Constitution provides that “[a] county or city may
9 make and enforce within its limits all local, police, sanitary, and other ordinances and regulations
10 not in conflict with general laws.” See also Gov. Code §37100.

11 28. To validly exercise its police powers, Escondido may only enact ordinances within
12 the parameters of the laws established by the State Legislature.

13 29. Escondido violated these powers by enacting the Ordinance that stands in direct
14 conflict with federal and state laws.

15 30. First, the Ordinance attempts to regulate immigration, a power that falls
16 exclusively to the federal government. The federal government has a comprehensive scheme
17 governing immigration, including the INA, 8 U.S.C. §11 *et seq.* Because the Ordinance attempts
18 to legislate in a field extensively occupied by the federal government, it exceeds the authority
19 granted Escondido by Art. XI, §7 of the California Constitution.

20 31. Second, the Ordinance provides that a landlord must evict an “illegal alien” tenant
21 within 10 business days. This provision conflicts with California Code of Civil Procedure §1159
22 *et seq.* and §1940.1, effective January 1, 2007, which proscribes the notice requirements and
23 timetables required to evict or no longer lease or rent to a tenant. Compliance with the Ordinance
24 is not possible without violating the provisions of Code of Civil Procedure §1159 *et seq.* and
25 §1940.1. As such, the Ordinance constitutes a violation of the authority granted Escondido under
26 Article XI, §7 of the California Constitution.

27 32. Third, the Ordinance impermissibly attempts to create a new circumstance by
28 which a landlord may evict a tenant for unlawful detainer. California Code of Civil Procedure

1 §1161 specifies the circumstances under which a tenant is guilty of unlawful detainer. None of
2 these circumstances include or refer to a lack of United States citizenship or lawful or unlawful
3 presence in the United States. Escondido's attempt to add an additional circumstance by which a
4 landlord may evict a tenant for unlawful detainer conflicts with §1161 and therefore is a violation
5 of the authority granted by Article XI, §7 of the California Constitution.

6 133. To constitute a valid exercise of Escondido's police power, the Ordinance must
7 relate to and be in furtherance of the public health, safety and welfare that are matters of local
8 concern, and the means that the City employs to further such health, safety and welfare must not
9 be highly unreasonable or arbitrary.

10 134. Escondido's failure to properly assess the existence of a threat to public safety or
11 welfare before enacting the Ordinance is an additional abuse of the City's police powers.

12 135. Before enacting the Ordinance, Escondido failed to conduct any analysis of the
13 criminal, fiscal, cultural, or other challenges facing Escondido in order to determine if: (a) any
14 actual problem existed; or (b) what measures were necessary to abate such problems, if any. In
15 fact, the supporting analysis referenced in the Ordinance's record does not support the
16 conclusions reached by the City, and misquoted the San Marcos Study.

17 136. Escondido claims that "illegal aliens" contribute to a higher crime rate, do not
18 report substandard housing conditions, and occupy units in numbers beyond occupancy limits.
19 Nowhere in the Ordinance record, however, are there any statistics or evidence to support the
20 claim that "illegal aliens" have contributed significantly, if at all, to any real or perceived
21 problems in Escondido.

22 137. With no evidence presented in the Ordinance's record that "illegal aliens"
23 contribute to the stated problems facing Escondido's housing community, Escondido cannot
24 claim that an ordinance restricting "illegal aliens" from renting in the City is related to and in
25 furtherance of the public safety and welfare of the City.

26 138. The decision to ban all "illegal aliens" from renting in Escondido is a decision
27 influenced by prejudice, misstatements from the San Marcos Study, and comments with no

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1 evidentiary support whatsoever. It is palpably unreasonable, unduly oppressive, and wholly
2 arbitrary that Escondido selected "illegal aliens" as the scapegoat for the ills facing the city.

3 139. Because the Ordinance will do nothing to remedy the burdens alleged by
4 Escondido, but rather will merely prevent a number of people, primarily minorities, from renting
5 in the City, the Ordinance is an abuse of Escondido's police powers.

6 140. Therefore, plaintiffs are entitled to declaratory and injunctive relief.

7 **ELEVENTH CAUSE OF ACTION**

8 **(STATE LAW PREEMPTION)**

9 141. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
10 through 140 above as though set forth herein.

11 142. Escondido may not adopt a municipal ordinance that is preempted by federal or
12 California law, pursuant to Art. XI, §7 of the California Constitution.

13 143. Article I, §20 of the California Constitution provides: "Non-citizens have the same
14 property rights as citizens." California law treats leasehold interests as property rights.

15 144. California Civil Code §671 provides that "any person, whether citizen or alien,
16 may take, hold, and dispose of property, real or personal, within the State."

17 145. On its face or as applied, the Ordinance directly conflicts with Cal. Const. Art. I,
18 §20 and Civil Code §671 and is thus preempted by California law.

19 146. On its face or as applied, the Ordinance attempts to legislate or regulate in a field
20 extensively occupied by the federal government through the INA, 8 U.S.C. §11 *et seq.* and thus
21 exceeds the authority granted Escondido by Art. XI, §7 of the California Constitution.

22 147. California Code of Civil Procedure §1161 specifies the circumstances under which
23 a tenant "is guilty of unlawful detainer" and may therefore be evicted. None of those
24 circumstances include or refer to lack of United States citizenship or lawful or unlawful presence
25 in the United States.

26 148. By permitting City officials to impose sanctions on landlords who fail to evict
27 tenants who are alleged to be "illegal aliens" under the Ordinance, when eviction on that ground
28 is not authorized by state law, the Ordinance conflicts with and is preempted by California law.

1 4. An order awarding plaintiffs costs and attorneys' fees, pursuant to statutes cited
2 herein, 42 U.S.C. §1988, California Code of Civil Procedure §1021.5, Fed. R. Civ. Proc. 54, and
3 any other applicable law.

4 5. Such other relief the Court deems just and proper.

5 Dated: November 3, 2006

Respectfully submitted,

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EXHIBIT A

ORDINANCE NO. 2006-38 R

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 ten business days 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 ten 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.