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

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| STEPHANIE REYNOLDS, et al. | ) | |
| | ) | |
| Plaintiffs, | ) | |
| | ) | Cause No.: 07CC-001420 |
| v. | ) | |
| | ) | Division: 31 |
| CITY OF VALLEY PARK, MO, | ) | |
| | ) | |
| Defendant. | ) | |

**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**
**AND MEMORANDUM OF LAW IN SUPPORT**

Plaintiffs, pursuant to MO.R.CIV.P. 74.04, hereby move this Court to enter judgment in their favor and against Defendant City of Valley Park. Plaintiffs move for a judgment declaring Valley Park Ordinance No. 1721, and its amendments set forth in Valley Park Ordinances Nos. 1723, 1725, and 1730,[1] void, and making permanent the temporary injunction entered in this cause enjoining Defendants from enforcing Ordinances Nos. 1721, 1723, 1725, and 1730.[2] In support of their Motion, Plaintiffs submit the following Memorandum of Law.

## MEMORANDUM IN SUPPORT

Valley Park Ordinance No. 1721 is yet another in a series of Ordinances enacted by Defendant City of Valley Park, Missouri aimed at chasing "illegal aliens" out of its community. The Circuit Court of St. Louis County, the Honorable Barbara Wallace, Judge Presiding, has

[1]The last amendment (*i.e.*, 1730) was made during the pendency of this case, while Ordinance No. 1721 was the subject of a temporary restraining order entered by this Court. Defendant's passage of Ordinance No. 1730 acted to modify the rewritten version of Ordinance No. 1721 as adopted by this Court. Defendant's actions in passing Ordinance No. 1730 are thus contemptuous.

[2]As used herein, all further references to "Ordinance No. 1721" are intended to include all amendments to that Ordinance.

already entered a permanent injunction enjoining the first two Ordinances passed by Defendant. Enforcement of Ordinance No. 1721 should, like its predecessors, be permanently enjoined.

## I. ORDINANCE NO. 1721 IS VOID UNDER STATE LAW.

### A. Ordinance No. 1721 Has No Rational Or Reasonable Basis In Fact Or Law.

It is axiomatic that to be valid a legislative enactment must be reasonable in light of the surrounding facts and circumstances. *See, e.g.,* Miller v. City of Town & Country, 62 S.W.3d 431, 437 (Mo.App. 2001) ("The test of the validity of an exercise of police power is reasonableness"); Jones. v City of Jennings, 595 S.W.2d 1, 3 (Mo.App. 1979) (ordinances enacted "without consideration of and in disregard of the facts and circumstances" are void). The undisputed facts here prove that Defendant had no reasonable or rational basis for enacting Ordinance No. 1721. For one thing, it was enacted without any means for enforcing its provisions. And, for another, Defendant admits that Ordinance No. 1721 bears no relation, whatsoever, to the purpose underlying the statutory scheme of which it is a part. Without ***any*** means of enforcement (let alone a reasonable or rational one), or any reasonable or rational relation to the purpose of the statutory scheme, Ordinance No. 1721 is clearly void.

#### 1. There Is No Means Of Enforcement

The plain language of Ordinance No. 1721 allows for only one conclusion: unless there are federal databases and agencies available which Valley Park can use to verify a person's immigration status, Ordinance No. 1721 is unenforceable. (Facts ¶¶ 1, 16-18).[3] And, Defendant has unequivocally admitted that it enacted Ordinance No. 1721 without having the ability to access any federal data base or agency for such a purpose. (Facts ¶¶ 21-28). Even today (more than three months after enactment), Defendant still has no authority to access federal databases to enforce

[3]References to "Facts" herein are to Plaintiffs' Uncontroverted Material Facts in Support of Their Motion for Summary Judgment, which is filed simultaneously herewith. References to specific paragraphs of those "Facts" are intended to include the evidence cited for each of those paragraphs.

Ordinance No. 1721 as intended. Id. The fact that Defendant enacted Ordinance No. 1721 without first assuring that it would have some means to enforce its provisions, standing alone, is sufficient to show that there was no reasonable or rational basis for its enactment.

The unreasonable and irrational nature of Defendant's legislative act is further borne out by the fact that the "contemplated" (but not realized) means of enforcing Ordinance No. 1721 is a fantasy. Defendant admits that it envisions only two means as an enforcement mechanism for Ordinance No. 1721: the federal SAVE (Systematic Alien Verification for Entitlements) database; and the LESC (Law Enforcement Support Center) database. (Facts ¶ 22). But, the City of Valley Park has not been authorized to use the SAVE database (Facts ¶¶ 24, 25), and the LESC cannot be used for the purpose of enforcing Ordinance No. 1721. (Facts ¶¶ 26-28); *see also* http://www.ice.gov/pi/news/factsheets/081204lesc.htm (noting that the LESC system "operates 24 hours a day, 365 days a year, to supply real-time assistance ***to law enforcement officers who are investigating or have arrested foreign-born individuals involved in criminal activity***" (emphasis added)).

And, even if Defendant could get authorized to use the SAVE database (and there is no evidence that it ever will),[4] that system simply does not provide the fool-proof information necessary to ensure that persons lawfully in this Country are not chased out of the City of Valley Park under the guise of Ordinance No. 1721. *See, e.g.,* 65 FR 58301-01 (2000) ("A [SAVE] response showing no Service record on an individual or an immigration status making the individual ineligible for a benefit is not a finding of fact or conclusion of law that the individual is not lawfully present"). Indeed, the SAVE system is not intended to be used as the judge and jury

[4]*See* http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=71cf58f91f08e010VgnVCM1000000ecd190aRCRD&vgnextchannel=91919c7755cb9010VgnVCM10000045f3d6a1RCRD ("To join the SAVE Program and acquire access to VIS-CPS to perform immigration status verification, an agency must first establish a Memorandum of Understanding (MOU) with the SAVE Program, and then establish a purchase order with the SAVE Program contractor to pay for VIS-CPS transaction fees. Access to SAVE is subject to USCIS resource limitations or other legal or policy criteria").

with respect to a person's immigration status, but only as a means of providing information with respect to eligibility for public benefits.

When a Defendant enacts legislation without first assuring that there is some means to enforce it as intended, the irrationality and unreasonableness of its actions is self-evident. Ordinance No. 1721 should be declared void, and its enforcement should be permanently enjoined.

2. There Is No Rational Or Reasonable Relation To The Statutory Scheme

Ordinance No. 1721 was enacted as part of the Property Maintenance Code of Valley Park. (Facts ¶ 1). That Code exists to ensure the structural integrity of buildings and premises, and to regulate the ill-effects that dilapidated buildings can have on the people living in them. (Facts ¶¶ 2-4). Yet, Defendant admits that Ordinance No. 1721 has no bearing, whatsoever, on the physical condition of buildings. (Facts ¶¶ 8-12). Indeed, as Defendant admits, nowhere else, other than in Ordinance No. 1721, does the Property Maintenance Code attempt to regulate which specific persons can and cannot inhabit a dwelling. Id. These admissions make clear that the provisions of, and the means employed for enforcing, Ordinance No. 1721 bear no rational or reasonable basis to the purpose or intent of the Valley Park Property Maintenance Code. Thus, for this additional reason, Ordinance No. 1721 is void.

**B. Enforcement of Ordinance No. 1721 Allows For, And Has Resulted In, An Improper Exercise Of Police Power.**

Generally, unless a legislative body retains an enforcement power for itself, it must provide specific standards or rules for enforcement of ordinances so as to avoid the arbitrary exercise of discretion. State ex rel. Ludlow v. Guffey, 306 S.W.2d 552, 557 (Mo. 1957); *see also* State ex rel. Manchester Improvement Co. v. City of Winchester, 400 S.W.2d 47, 48 (Mo. 1966). While the need for specific standards is somewhat more lax when an ordinance is to be enforced by a code official, some standards are still required because code personnel do not have unlimited authority. Eastern Missouri Laborers' Dist. Council v. City of St. Louis, 5 S.W.3d 600, 603 (Mo.App. 1999).

Standards of enforcement should be specific even for code enforcement officials unless the subject of the ordinance requires the exercise of discretion to protect the public health and safety, Id.

The provisions of Ordinance No. 1721 governing verification of a person's immigration status do not concern the public health and safety insofar as a code enforcement officer's duties in issuing occupancy permits. Thus, those provisions are void unless there are sufficient standards and guidelines to prevent their arbitrary and unreasonable enforcement. Id. As history demonstrates, enforcement of Ordinance No. 1721 has already been unreasonable and arbitrary due to a lack of specificity.

Defendant has expressly delegated the power to issue or deny occupancy permits under Ordinance No. 1721 to the "Building Commissioner." (Facts ¶¶ 1, 6, 38). The fact that the Building Commissioner exercises unbridled discretion in deciding how to enforce Ordinance No. 1721 is borne out by both the plain language of the Ordinance itself, and the testimony as to its enforcement in actual practice. Ordinance No. 1721 indicates that, for each proposed occupant of a dwelling unit, a landlord and prospective tenant are required to submit an occupancy permit application which includes the names, ages, citizenships, and ***any other "identifying information"*** that the enforcement officer, in his discretion, decides to require. (Facts ¶¶ 1, 6). In practice, this discretion to request any other "identifying information" deemed desirable, has resulted in issuance of a nine page form entitled "Documents Required to Apply for a Valley Park Occupancy Permit," which, by its own terms, requires a landlord and tenant to produce "Proof of Lawful Presence" and "Proof of Identity." (Facts ¶¶ 30-32).

This exercise of unbridled discretion in enforcement has, in practice, negated the very purpose for which Defendant claims to have enacted Ordinance No. 1721. Defendant has repeatedly stated that Ordinance No. 1721 was enacted for the purpose of taking the onus off of landlords and tenants to prove a prospective tenant's immigration status, and putting that onus on

the City of Valley Park. (Facts ¶ 7). However, in practice Ordinance No. 1721 does exactly the opposite: it mandates proof of lawful presence from landlords and prospective tenants. (Facts ¶¶ 29-32). Because Ordinance No. 1721 is devoid of adequate standards and guidelines to ensure that it is not enforced contrary to its stated intent it is void. Its enforcement should be permanently restrained.

**C. Ordinance No. 1721 Serves No Legitimate Purpose.**

Ordinance No. 1721 cannot be enforced as originally contemplated because there is no means for the "Building Commissioner" to fulfill his duty of "verify[ing] with the federal government whether [a prospective tenant or property buyer] is lawfully present in the United States pursuant to 8 USC § 1373(c)." (Facts ¶¶ 1, 6, 16, 22-28). Thus, requiring a property owner to provide voluminous information relating to a person's citizenship and/or legal status serves no purpose, whatsoever, other than to harass the landowner and prospective tenant/buyer. Indeed, under the terms of the Ordinance, even if a prospective tenant/buyer stated he was not in this Country legally, Defendant City of Valley Park could not deny an occupancy permit based on that admission because the federal government will not verify that fact. Because the Ordinance serves no legitimate purpose, it is void.

**D. Defendant Exceeded Its Delegated Powers In Enacting Ordinance No. 1721.**

"It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers and no others: first, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the declared objects and purposes of the corporation - not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation and the power is denied." State ex rel. Curators of Univ. of MO v. McReynolds, 193 S.W.2d 611, 612 (Mo. en banc 1946) (*quoting* Dillon, Municipal Corporations

§ 237 (1911); *see also* Premium Std. Farms, Inc. v. Lincoln Township of Putnam Cty., 946 S.W.2d 234, 238 (Mo. en banc 1997) (same).

Defendants have not been delegated power to regulate immigration. Nor have they been delegated any power which could conceivably be interpreted to allow them to use the "Property and Maintenance Code" to prohibit a specific class of people from occupying buildings in Valley Park. Accordingly, for these additional reasons, Ordinance No. 1721 should be declared void, and its enforcement should be permanently enjoined.

## II. ORDINANCE NO. 1721 IS VOID UNDER FEDERAL LAW.

For over 100 years, the United States Supreme Court has emphasized that the power to regulate immigration is exclusively federal. There are two reasons for this. First, a single state could otherwise "embroil us in disastrous quarrels with other nations." Chy Lung v. Freeman, 92 U.S. 275, 280 (1875). Second, "the laws which govern the right to land passengers in the United States from other countries ought to be the same in New York, Boston, New Orleans, and San Francisco." Henderson v. Mayor of City of New York, 92 U.S. (2 Otto) 259, 273 (1875).

Local laws concerning immigration and foreign nationals are invalid under the Supremacy Clause of the United States Constitution if they: (1) are ***field*** preempted because they are an attempt to legislate in a field occupied by the federal government, (2) are ***conflict*** preempted because they "burden[] or conflict[] in any manner with any federal laws or treaties," or "[stand] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress"; or (3) attempt to regulate immigration, which is "unquestionably exclusively a federal power." DeCanas v. Bica, 424 U.S. 351, 354, 362, 363 (1976). Any one of these flaws would render a local ordinance invalid. *See* League of United Latin American Citizens v. Wilson, 908 F.Supp. 755, 768 (C.D. Cal. 1995); Villas at Parkside Partners v. City of Farmers Branch, 2007 WL 1498763, **4-5 (N.D. Tex.) Ordinance No. 1721 violates federal law on all three counts.

### A. Ordinance No. 1721 Is Void Because it Attempts to Regulate Immigration and Due To Field Preemption.

Most basically, Defendants' effort to decide which non-citizens can live where is simply beyond their authority. Permitting or barring residency of non-citizens is the core of immigration regulation, reserved to Congress by the Constitution. Moreover, Congress has entirely occupied the relevant field, leaving no room for contrary or even supplemental regulation by states, much less by cities. In Hines v. Davidowitz, 312 U.S. 52, 66-67 (1941), which invalidated Pennsylvania's state alien-registration law (a law that, similar to Ordinance No. 1721, required noncitizens to register with local authorities), the Supreme Court explained:

> [W]here the federal government, in the exercise of its superior authority in this field, has enacted a complete scheme of regulation ... states cannot, inconsistently with the purpose of Congress, conflict or interfere with, curtail ***or complement***, the federal law, or enforce additional or auxiliary regulations.

(emphasis added). Deciding which foreign nationals may live within our nation's borders and for how long – whether as of right for some immigration statuses, or as a matter of discretion for congressionally specified federal officials[5] – is a ***federal*** decision, governed by an extraordinarily complex and comprehensive federal network of substantive and procedural statutes and regulations (discussed below). Congress has frequently adjusted the relevant rules, and may soon do so again. *See* Comprehensive Immigration Reform Act, S.2611 (currently under consideration). Our nation has only one set of borders. When the federal government has not acted to deport someone, whatever that person's formal immigration status, individual cities may not countermand that federal decision and create a checkerboard of residency exclusions.[6]

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[5]*See* 8 U.S.C. §§ 1158, 1182(d)(5), 1229b, 1229c, 1255, 1259; 8 C.F.R. § 241.6 (2006) (discussing asylum, voluntary departure, parole, cancellation of removal, adjustment of status, registry, stays of removal, etc.).

[6]As the Supreme Court explained when invalidating a Massachusetts statute touching on foreign relations:

Similarly, the federal government has decided, comprehensively, what kind of associations with aliens, legal and illegal, should be penalized, and the magnitude of that penalty. Among the aspects of the field which are regulated exclusively by the federal government is "harboring" of certain aliens, including what constitutes harboring, when it is unlawful, and what the penalties are. *See* 8 U.S.C. § 1324(a)(1)(A)(iii). The federal statute forbids only harboring with "knowing" or "reckless disregard" of the alien's unlawful immigration status. Id. *See* Garrett v. City of Escondido, 465 F.Supp.2d 1043, 1056 (S.D.Cal. 2006) (noting, in granting a restraining order against enforcement of a similar ordinance, that "federal statutes [that] specifically provide for fines and criminal penalties for the harboring of illegal aliens" cause "this Court [to] find[] serious concerns in regards to the field preemption of the Ordinance by existing federal statutes.")

**B. Ordinance No. 1721 Is Void Under Principles of Conflict Preemption.**

Even if it were permissible for Defendant to regulate residency for non-citizens (which it is not), under the Supremacy Clause such regulation may not conflict with federal requirements. *See, e.g.,* Geier v. American Honda Motor Co., 529 U.S. 861 (2000). Ordinance No. 1721 is void because it conflicts irreconcilably with numerous provisions of federal immigration law. The Ordinance seeks to place itself under the aegis of federal law by emphasizing that "The Building Commissioner shall make no independent judgment of the legal status of any alien." (Facts ¶¶ 1, 6, 16). The Building Commissioner is instructed to "verify with the federal government whether the alien is lawfully present in the United States, pursuant to 8 U.S.C. § 1373(c)." Id.

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> [T]he fact of a common end hardly neutralizes conflicting means ... and the fact that some companies may be able to comply with both sets of sanctions does not mean that the state Act is not at odds with achievement of the federal decision about the right degree of pressure to employ ... Sanctions are drawn not only to bar what they prohibit but to allow what they permit, and the inconsistency of sanctions here undermines the congressional calibration of force.

Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363, 379-380 (2000); *see also* American Ins. Assoc. v. Garamendi, 539 U.S. 396 (2003).

The form the City has promulgated to implement the requirement in Ordinance No. 1721 that the federal government verify legal status – the "Documents Required to Apply for a Valley Park Occupancy Permit" – is both confusing and in conflict with federal law governing residence.[7] (Facts ¶¶ 31, 32). More important, however, this provision in the Ordinance miscomprehends both the nature of the federal regime governing non-citizen residency and the availability of federal assistance. Federal immigration status is simply not susceptible to the kind of routine and determinative answer Ordinance No. 1721 suggests. No single federal official can unilaterally decide or discover whether someone's presence is unlawful. Rather, the federal immigration laws establish a complex and careful set of procedures designed to assure that an alien is not erroneously identified as unlawfully present. The process of determining who can stay and who must go involves (as the Ordinances do not) written notice, a hearing with the opportunity to present evidence and argument, administrative appeal, and judicial review.[8] Moreover, aliens frequently have the right to remain in the United States during removal proceedings, which often last months and sometimes even years, and during the pendency of asylum applications or for "withholding of removal." *See* 8 U.S.C. §§ 1158, 1251(b)(3). This right would be rendered illusory if states or local governments could simply deny aliens a place to live even though they have not yet been ordered deported.

Congress had a good reason to set up such an elaborate procedure. Both the facts and the law that determine whether a person is unlawfully present are frequently murky; there can be

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[7]The "Documents Required to Apply for a Valley Park Occupancy Permit" form provides that individuals in certain legal immigration statuses (*e.g.*, A-1 diplomatic visa holders, B-1 and B-2 temporary visitors, and visitors who have entered the United States lawfully under the Visa Waiver Program) are not "eligible for a permit." (Facts ¶¶ 31, 32). But federal immigration law expressly allows those individuals to live in the United States for a temporary period, typically lasting at least several months. *See* 8 U.S.C. § 1187.

[8]*See, e.g.,* 8 U.S.C. §§ 1154, 1228-1252, 1255-1259; *see also* Stephen H. Legomsky, Immigration and Refugee Law and Policy 634-645 (4th Ed. 2005) (providing overview of deportation process).

disputes concerning whether the person was inspected upon entry, whether the person's entry document was genuine or counterfeit, or whether the representations the person made to secure entry were true or fraudulent. Moreover, Congress has chosen to delegate to various officials involved in the proceedings the discretion, in various circumstances, to waive particular grounds of removal and allow the person to remain in the United States. These include asylum, cancellation of removal, withholding of removal, adjustment of status, registry, and other miscellaneous waivers. *See* 8 U.S.C. §§ 1158, 1229b, 1251(b)(3), 1255, 1259.

As one justice of the United States Supreme Court has explained:

> Until an undocumented alien is ordered deported by the Federal Government, no State can be assured that the alien will not be found to have a federal permission to reside in the country, perhaps even as a citizen. Indeed, ***even the Immigration and Naturalization Service cannot predict with certainty whether any individual alien has a right to reside in the country until deportation proceedings have run their course***. *See, e.g.,* 8 U.S.C. §§ 1252, 1253(h), 1254 (1976 ed. and Supp.IV).

Plyler v. Doe, 457 U.S. 202, 241 (1982) (Powell, J., concurring) (emphasis added); *see also* id. at 236 (Marshall, J., concurring) ("[T]he structure of the immigration statutes makes it impossible for the State to determine which aliens are entitled to residence, and which eventually will be deported").

It is for this very reason that the federal executive branch itself has definitively declared that the federal government's "Systematic Alien Verification for Entitlements" (SAVE) program – the program implementing the federal statute referenced in the Ordinance, *i.e.,* 8 U.S.C. § 1373(c) – does not authoritatively establish any non-citizen's immigration status:

> [F]or purposes of the requirement [that governmental entities report when they 'know' an alien is not lawfully present in the United States] … an entity will 'know' that an alien is not lawfully present in the United States only when the unlawful presence is a finding of fact or conclusion of law that is made by the entity as part of a formal determination that is subject to administrative review … In addition, that finding or conclusion of unlawful presence must be supported by

> a determination by the Service or the Executive Office of Immigration Review, such as a Final Order of Deportation. ***A Systematic Alien Verification for Entitlements (SAVE) response showing no Service record on an individual or an immigration status making the individual ineligible for a benefit is not a finding of fact or conclusion of law that the individual is not lawfully present.***

65 FR 58301-01 (2000) (emphasis added).

Moreover, even if the SAVE databases could, as a matter of federal law, determine the lawful status of an alien (which they cannot), the existence of those databases would nonetheless be insufficient to save Ordinance No. 1721. First, the federal government has not so far granted access to Valley Park to the SAVE databases, (Facts ¶¶ 23, 24, 25), and there is no proof (other than rank hearsay) it ever will.[9] Second, even if access were available, SAVE's databases are incomplete as far as recording lawful presence in the United States, because they are actually geared towards determining eligibility for various federal aid programs. Third, the SAVE databases include no information whatsoever about citizenship status. And, finally, the SAVE program databases are riddled with error, as numerous federal reports have found.[10]

In short, Defendants' attempt to clothe the residency requirements of its Ordinances in federal authority is a mirage. The federal method for deciding who may live within our nation's borders has both substantive and procedural components that conflict with the casual approach of

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[9]*See* Garrett v. City of Escondido, 465 F.Supp.2d 1043, 1057 (S.D.Cal. 2006) (in case involving similar ordinance in which local officials proclaimed they would use the SAVE system, the court noted its "serious concerns regarding the burden this Ordinance will place on federal regulations and resources," and that it was "unclear to this Court ... whether Defendant would be entitled to use the SAVE program where the Ordinance seeks to regulate landlord-tenant relationships outside of the scope of a public benefit").

[10]*See, e.g.*, U.S. Department of Justice Office of Inspector General, Follow-up Report on INS Efforts to Improve the Control of Nonimmigrant Overstays, Report No. I-2002-006, April 2002 ("According to an official from the INS's Statistics Office, the unreliability of nonimmigrant information continues to be a problem ... To compound the difficulty in identifying overstays, the Statistics Office no longer receives updates on visa extensions or adjustments of status. Therefore, some aliens appear to be overstays when they are legally in the United States. The Statistics Office Official acknowledged that current Form I-94 data is not reliable for ... determining with certainty whether an alien who appears to be an overstay is actually an overstay").

Ordinance No. 1721. And the programs the federal government has implemented to regulate access to monetary public benefits are not intended to and cannot properly be used to report unlawful presence in the United States. The Ordinance is thus preempted.[11]

Even if Ordinance No. 1721 did not conflict with federal immigration law (which it does), it would still be preempted because it conflicts with the provisions of the Fair Housing Act, 42 U.S.C. § 3604, which forbids national origin discrimination in housing. The problem is that landlords naturally wish to find a tenant and get necessary permits speedily. Ordinance No. 1721 disrupts this normal progression when a tenant is a non-citizen of the United States because its verification process puts landlords at risk of finding out, days or weeks later, that no occupancy permit will be granted for the prospective non-citizen tenant if his immigration status cannot be verified. The only way to avoid this disruption is to decline renting to any would-be tenant who somehow looks or sounds foreign-born – conduct that violates the Fair Housing Act. *See* 42 U.S.C. § 3604. Landlords are thus placed in an untenable position in which the requirements of local law push them to violate federal law. Such a conflict is illegal; federal fair housing law trumps. *See* Reitman v. Mulkey, 387 U.S. 369 (1967) (striking down results of a California referendum that encouraged, but did not mandate, private race discrimination); 42 U.S.C. § 3615 ("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").

[11]Defendant's suggestion that they can use the Law Enforcement Service Center, known as "LESC" in lieu of SAVE is simply wrong. Access to LESC is available to police authorities, not building commissioners, and its databases are not available to be used for non-law-enforcement purposes such as Valley Park proposes. *See, e.g.,* 62 FR 26555-03 (describing Law Enforcement Support Center Database as relevant for "Immigrants that have the status of legal permanent resident and/or United States citizen and who are either the subject of an investigation, or have been arrested, charged with and/or convicted of criminal or civil offenses which could render them deportable or excludable under the provisions of immigration and nationality laws."); *see also* Facts ¶¶ 26, 27, 28.

## III. PLAINTIFFS WILL SUFFER IRREPARABLE HARM UNLESS ENFORCEMENT OF ORDINANCE NO. 1721 IS PERMANENTLY ENJOINED.

Once this Court declares Ordinance No. 1721 void, the need for a permanent injunction to avoid irreparable harm is clear. Indeed, the Circuit Court of St. Louis County, Honorable Barbara Wallace presiding, faced with the issue of whether to enter a permanent injunction to restrain the enforcement of prior similar Valley Park Ordinances aimed at "illegal aliens" answered the question "yes," and entered a final judgment permanently enjoining enforcement of those Ordinances. Under principles of issue preclusion, Defendant is thus barred from contesting the element of irreparable harm here. *See, e.g.,* Woods v. Mehlville Chrysler-Plymouth, Inc., 198 S.W.3d 165, 168 (Mo.App. 2006).

Even if issue preclusion were not applicable here (which it is), entry of a permanent injunction would still be warranted because Defendant should be precluded from enforcing a void ordinance regardless of the circumstances. There is no adequate remedy at law to protect Plaintiffs from the burdensome and unwarranted practices being utilized by Defendant to enforce Ordinance No. 1721. If Ordinance No. 1721 continues to be enforced under the current scheme, Plaintiffs will suffer: a loss of prospective tenants/buyers due to the inordinate delays caused by Ordinance No. 1721; and a loss of good will in their rental businesses due to having to seek burdensome verification of citizenship status and/or lawful presence. Such damages cannot be compensated by monetary awards.

## CONCLUSION

WHEREFORE, Plaintiffs respectively request that this Court enter judgment in their favor and against Defendant City of Valley Park, and that this Court make permanent the temporary restraining order now in place which enjoins enforcement of Valley Park Ordinance No. 1721, and its amendments as set forth in Valley Park Ordinances No. 1723, 1725, and 1730.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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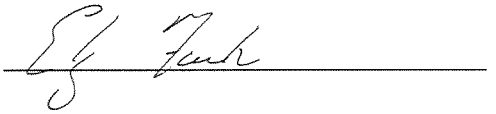

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

| | | |
|---|---|---|
| STEPHANIE REYNOLDS, et al. | ) | |
| | ) | |
| | ) | |
| Plaintiffs, | ) | |
| | ) | Cause No.: 07CC-001420 |
| v. | ) | |
| | ) | Division: 31 |
| CITY OF VALLEY PARK, MO | ) | |
| | ) | |
| Defendant. | ) | |

**PLAINTIFFS' UNCONTROVERTED MATERIAL FACTS**
**IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT**

Plaintiffs, pursuant to Missouri Rule of Civil Procedure 74.04(c)(1), submit the following statement of uncontroverted material facts in support of their Motion for Summary Judgment:

1. Valley Park Ordinance No. 1721 was enacted as part of Valley Park's Property Maintenance Code, § 510.010, et seq. *See* Certified Copy of Ordinance No. 1721, submitted herewith as Exhibit A; *see also* Transcript of Deposition of Valley Park Building Commissioner Jeff Schaub, taken April 26, 2007 ("Schaub Depo"), attached hereto as Exhibit B, pp. 36.

2. The Valley Park Property Maintenance Code expressly adopts the International Property Maintenance Code, 2003 Edition, subject to limited additions, insertions, and changes as set forth in §510.020. *See* Valley Park Property Maintenance Code, attached hereto as Exhibit C.[1]

3. The International Property Maintenance Code, 2003 Edition, states that it is intended to apply to "all existing residential and nonresidential structures and all existing premises." *See* International Property Maintenance Code, 2003 Edition, submitted herewith as

[1]Plaintiffs have requested that Defendant provide them with a certified copy of both the Valley Park Property Maintenance Code and the International Property Maintenance Code, and will submit those certified copies to the Court at, or before, the summary judgment hearing.

Exhibit D, § 101.2.

4. The International Property Maintenance Code states that its intent is "to ensure public health, safety and welfare insofar as they are affected by the continued occupancy and maintenance of structures and premises." Exhibit D, § 101.3.

5. Valley Park Ordinance No. 1721 has been amended three times, and these amendments are reflected in Valley Park Ordinances No. 1723, 1725, and 1730. *See* Certified Copies of Ordinances No. 1723 and 1725, and Copy of Ordinance No. 1730, attached hereto, respectively, as Exhibits E, F, and G.[2]

6. Accounting for all of its Amendments (as set forth in Ordinances No. 1723, 1725, and 1730), Valley Park Ordinance No. 1721[3] reads as follows:

**AN ORDINANCE REPEALING SECTION 510.020 SUBSECTION 103.6.1 OF THE PROPERTY MAINTENANCE CODE RELATING TO INSPECTIONS AND OCCUPANCY PERMITS AND ENACTING A NEW ORDINANCE IN LIEU THEREOF RELATING TO THE SAME SUBJECT MATTER**

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

**Section One**

Section 510.020 Subsection 103.6.1 of the Code of Ordinances is hereby repealed.

**Section Two**

A new section to be known as "Section 510.020 Subsection 103.6.1, Applications and Inspections" is hereby adopted as follows:

> (a) It shall be unlawful for any owner or agent of real property containing a dwelling unit or units to permit or allow any person to occupy the dwelling unit or part thereof for any

[2]Plaintiffs have requested that Defendant provide them with a certified copy of Ordinance No. 1730, and will submit the certified copy to the Court at, or before, the summary judgment hearing.

[3] As used herein, all further references to "Ordinance No. 1721" are intended to include all amendments to that Ordinance.

purpose until a certificate of occupancy has been issued by the Building Commissioner. Every owner, agent, or manager of any dwelling unit shall inform the City whenever any portion of the building or dwelling unit becomes vacant, or that a change of occupancy in the building or unit is imminent and an inspection may occur, and the owner, manager or agent shall apply for an occupancy permit on such forms provided by the City. The City shall review the application, which shall set forth names, ages, citizenships, and relationships for each proposed occupant, together with such identifying information that shall be required by the City. The Building Commissioner, consistent with federal law and Ordinance No. 1722, shall not issue an occupancy permit and will deny the same if any alien unlawfully present in the United States is a proposed occupant of the dwelling unit or units. When an alien is a proposed occupant, the Building Commissioner shall verify with the federal government whether the alien is lawfully present in the United States, pursuant to 8 USC § 1373(c). The Building Commissioner shall make no independent judgment of the legal status of the alien. If the unit contains no proposed occupant who is an alien unlawfully present in the United States, an inspection shall be performed under the provisions of this article and, if compliance with this section is made, an occupancy permit shall be granted to the owner or his agent setting forth the occupants' names, relationships, and number of occupants allowable at the premises.

(b) It shall be unlawful for any owner, agent or manager of a dwelling unit or units to knowingly make any false statements in the application for occupancy as to the names, ages, citizenship, relationships, identification or number of occupants who will occupy the premises.

(c) This section shall only apply prospectively, to occupancies commencing after the effective date of this ordinance.

(d) If the federal government notifies the City of Valley Park that it is unable to verify whether a proposed occupant who is an alien is lawfully present in the United States, the City of Valley Park shall not deny the occupancy permit on that basis, and an inspection shall be performed.

(e) Any owner of real property containing a dwelling unit who is denied an occupancy permit, or any proposed occupant who is unable to lease a dwelling unit because the

City of Valley Park has denied an occupancy permit concerning the occupant, may challenge the denial of the occupancy permit before the Board of Adjustment of the City of Valley Park, Missouri, subject to the right of appeal to the St. Louis County Circuit Court. The determination of whether an alien is unlawfully present in the United States shall only be made by the federal government. The Board of Adjustment may take judicial notice of any verification of the individual's status previously provided by the federal government and may request the federal government to provide an automated or testimonial verification pursuant to 8 USC § 1373(c).

**Section Three**

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

*See* Exhibits A, E. F, G.

7. The intent of the legislature of Valley Park in enacting Ordinance No. 1721 (in lieu of its predecessors) was to take the burden off of property owners to prove a tenant is lawfully in the United States, and to put the burden on the City of Valley Park to prove that a prospective tenant is not lawfully in the United States. *See* Transcript of Hearing Before Honorable Barbara Wallace, attached hereto as Exhibit H, pp. 72-74; Transcript of Mayor Jeffery Whitteaker, taken April 26, 2007 ("Mayor Depo"), attached hereto as Exhibit I, pp. 56-57.

8. Ordinance No. 1721 does not regulate the condition of existing structures or premises. Exhibit A; *see also* Schaub Depo, pp. 54-55; Mayor Depo, pp. 36-38.

9. Ordinance No. 1721 does not address the health, safety and welfare of the public insofar as these things are affected by structures and premises. Exhibit A; *see also* Schaub Depo, pp. 54-55; Mayor Depo, pp. 36-38.

10. Other than as provided for in Ordinance No. 1721, the Valley Park Property Maintenance Code relates to the regulation of people only insofar as how many people can occupy a specific premises. Schaub Depo, pp. 36-37.

11. Other than as provided for in Ordinance No. 1721, the Valley Park Property Maintenance Code has no provisions relating to the immigration status of residents of any particular premises. Schaub Depo, pp. 36-37.

12. When a dwelling unit meets all physical building code requirements, the satisfactory condition of the building does not diminish based solely on the fact that the person living there may be in the United States illegally. Schaub Depo, pp. 54-55.

13. Under Ordinance No. 1721, if a potential lessee states on an occupancy application that he is a citizen of the United States, an occupancy permit is issued immediately if the proposed dwelling unit has passed an inspection. Exhibit A; Mayor Depo, pp. 59-62; Transcript of Deposition of Roxanne Ruppel ("Ruppel Depo"), taken April 26, 2007, attached hereto as Exhibit J, pp. 38-40, 44.

14. Under Ordinance No. 1721, if a potential lessee states on an occupancy application that he or one of his household members is not a United States citizen, the Building Commissioner is required to verify his immigration status with the federal government before issuing an occupancy permit. Exhibit A; Mayor Depo, pp. 59-62; Ruppel Depo, pp. 38-40, 44.

15. When a person states on an occupancy permit application that he or one of his household members is not a United States citizen, the Building Commissioner is required to verify, with the federal government, the immigration status of the non-United States citizen even if that person states that his presence in the United States is entirely lawful. Exhibit A; Mayor Depo, pp. 59-62; Ruppel Depo, pp. 38-40, 44.

16. Under Ordinance No. 1721 only the federal government can make the determination of whether an alien is lawfully present in the United States. Exhibit A; Ruppel Depo, p. 43.

17. If the federal government cannot, or will not, verify whether an alien is in this Country legally, an occupancy permit must be issued if the property has passed an inspection. Exhibit A.

18. The enforceability of Ordinance No. 1721 is dependent on being able to use a federal database. Schaub Depo, p. 66.

19. Ordinance No. 1721 became effective and enforceable on February 27, 2007. Mayor Depo, p. 68.

20. The City of Valley Park enforced Ordinance No. 1721 until its enforcement was retrained by issuance of a temporary restraining order on April 5, 2007.

21. Prior to enacting Ordinance No. 1721, the City of Valley Park had established no system for verifying with the federal government whether a person is in the United States legally or illegally. Schaub Depo, pp. 41, 43, 60; Ruppel Depo, pp. 38-40, 42-43.

22. The only two programs that Valley Park would use to verify with the federal government whether a person is in the United States legally is the SAVE program or the LESC program. Mayor Depo, pp. 60-61, 80; Schaub Depo, pp. 28, 37, 40-41; Ruppel Depo, pp. 34-35, 46-48.

23. The City of Valley Park has never successfully used either the SAVE program or the LESC program to verify any person's legal status. Mayor Depo, p. 80; Schaub Depo, pp. 37-38, 43-44, 49, 60; Ruppel Depo, p. 42, 45-46, 48, 59-60.

24. During the time that Ordinance No. 1721 was effective and being enforced, the City of Valley Park did not have the authorization to use the federal SAVE program. Ruppel Depo, pp. 42-43, 47-50, 52-55, 59-60.

25. As of today, the City of Valley Park (itself) does not have the ability to ask the

federal government to determine whether a person is in the United States legally. Schaub Depo, pp. 41, 43, 60; Ruppel Depo, pp. 49-50, 52-55, 59-60.

26. Only law enforcement officials can use the federal LESC database to check on the legal status of individuals. Schaub Depo, pp. 60-61; Ruppel Depo, pp. 43-44.

27. Law enforcement officials are not involved in issuing occupancy permits. Schaub Depo, p. 60.

28. Law enforcement officials will not use the LESC system to check the legal status of potential occupants of dwelling units in the City of Valley Park. Affidavit of St. Louis County Chief of Police Jerry Lee, attached hereto as Exhibit K.

29. The Mayor of Valley Park left it up to the Building Commissioner to develop the forms and procedures for implementing Ordinance No. 1721. Mayor Depo, pp. 79-80.

30. During the time that Ordinance No. 1721 was effective and being enforced, if a person indicated on an application for an occupancy permit that they were not a United States citizen, the City of Valley Park required some type of documentation indicating a person's lawful immigration status. Ruppel Depo, pp. 40-41, 67-68, 71, 73-74, 79.

31. The documents a person could produce as proof of lawful presence in the United States were listed in a 9 page document entitled "Documents Required to Apply for a Valley Park Occupancy Permit." Schaub Depo, pp. 14-16 & Exhibit 2, thereto; Ruppel Depo, p. 68, 71, 73-74; *see also* Certified Copy of Documents Required to Apply for a Valley Park Occupancy Permit, attached hereto as Exhibit L.

32. The document entitled "Documents Required to Apply for a Valley Park Occupancy Permit" indicates a landlord and/or prospective tenant should provide, for every member of his household, "Proof of Lawful Presence" and "Proof of Identity." Schaub Depo,

pp. 14-16 & Exhibit 2, thereto; Exhibit L.

33. When a prospective tenant reveals on an occupancy permit application that he is not a citizen of the United States, under Ordinance No. 1721 the Building Commissioner is charged with verifying with the federal government whether that person is lawfully present in the United States. Exhibit A.

34. The "Building Commissioner" for the City of Valley Park is Jeff Schaub.

35. Jeff Schaub does not know what the documents are which are listed on the "Documents Required to Apply for a Valley Park Occupancy Permit." Schaub Depo, pp. 16-20.

36. If a person gave Jeff Schaub one of the documents listed on "Documents Required to Apply for a Valley Park Occupancy Permit" relating to that person's legal status he would not know what they were. Schaub Depo, pp. 16-20.

37. There is no one employed by the City of Valley Park who has been trained to recognize the documents listed on "Documents Required to Apply for a Valley Park Occupancy Permit." Schaub Depo, p. 20-22.

38. The person in Valley Park who has taken responsibility for actually checking on the legal status of potential occupants of dwelling units in the City of Valley Park is Roxanne Ruppel, the Valley Park administrative assistant and assistant to the mayor. Schaub Depo, pp. 21, 27, 60; Ruppel Depo, pp. 8, 77-78.

39. Roxanne Ruppel does not know what the documents are which are listed on the "Documents Required to Apply for a Valley Park Occupancy Permit." Ruppel Depo, pp. 69-71.

40. If a person gave Roxanne Ruppel one of the documents listed on "Documents Required to Apply for a Valley Park Occupancy Permit" relating to that person's legal status she would not know what they were. Ruppel Depo, pp. 69-71.

41. The process Valley Park would use to verify with the federal government whether a person is in the United States legally would take 12 to 15 days. Mayor Depo, pp. 60-61.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served via U.S. mail, postage prepaid, on the 31st day of May on the following counsel of record:

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