UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

WINDHOVER, INC., and JACQUELINE GRAY,	)	
Plaintiffs,	)	
	)	Cause No. 4:07CV00881-ERW
v.	)	
CITY OF VALLEY PARK, MO,	)	
Defendant.	)	

MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

FACTUAL BACKGROUND

1. On July 17, 2006, Ordinance 1708 was enacted by the City of Valley Park.

2. On September 22, 2006, four plaintiffs filed the lawsuit of *Reynolds v. Valley Park*, 06-CC-3802, in the Circuit Court of the County of St. Louis, seeking invalidation of Ordinance 1708. Plaintiff Jacqueline Gray in the case at bar was among the four plaintiffs in *Reynolds*.

3. On September 26, 2006, Ordinance 1715 was enacted by the City of Valley Park. Ordinance 1715 repealed and replaced Ordinance 1708.

4. On September 27, 2006, the plaintiffs in *Reynolds* amended their petition to seek a declaration that Ordinance 1715 was void and an injunction restraining the enforcement of Ordinance 1715.

5. On February 5, 2007, the Board of Aldermen passed, and on February 14, 2007, the Mayor approved, Ordinance 1722, the ordinance at issue in this litigation.

6. After February 5, 2007, counsel for Defendant contacted counsel for plaintiffs in *Reynolds* and offered to stipulate that plaintiffs could amend their petition to challenge Ordinance 1722 (as well as Ordinance 1721). Defendant sought to allow plaintiffs in *Reynolds* to address the many new aspects of Ordinance 1722 and give them the opportunity to challenge the current ordinance.

7. After February 5, 2007, counsel for plaintiffs in *Reynolds* declined to challenge the validity Ordinance 1722 and declined to amend their petition to include Ordinance 1722.

8. On March 1, 2007, the Circuit Court of the County of St. Louis (J. Wallace) held a hearing on the questions of whether Ordinances 1708 and 1715 were moot, and whether the Court could issue a declaratory judgment regarding particular challenges to those repealed ordinances under state law.

9. At the March 1, 2007, hearing counsel for plaintiffs in *Reynolds* reiterated that they were challenging *only* the (repealed) Ordinances 1708 and 1715.

10. On March 12, 2007, the Circuit Court of the County of St. Louis issued its decision in *Reynolds*, holding that "Ordinance No. 1708 and Ordinance No. 1715 are declared void." *Reynolds v. Valley Park*, No. 06-CC-3802, slip op. at 8. The *Reynolds* Court did not evaluate the validity of Ordinance 1722 at any point in its eight-page decision and did not enjoin the enforcement of Ordinance 1722. *Id*.

11. The Defendant in Reynolds had not yet submitted any briefs to that court concerning the merits of the claim that the employment provisions of the repealed ordinances were in violation of state law, at the time of the March 12, 2007, decision by Circuit Court of the County of St. Louis in *Reynolds*.

ARGUMENT

I. THE JUDICIAL STANDARD FOR FINDING PRECLUSION

Plaintiffs maintain that the doctrine of collateral estoppel precludes Defendant from asserting any defenses in this case with respect to Ordinance 1722. The four requirements for such non-mutual issue preclusion to apply under Missouri law are:

> (1) whether the issue decided in the prior adjudication was identical to the issue presented in the present action; (2) whether the prior adjudication resulted in a judgment on the merits; (3) whether the party against whom estoppel is asserted was a party or was in privity with a party to the prior adjudication; and (4) whether the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior suit.

Allstate Ins. Co. v. Blount, 491 F.3d 903, at *13 (8th Cir. 2007). See also *State ex rel. Johns v. Kays* 181 S.W.3d 565, 566 (Mo. 2006). Plaintiffs fail to meet the first and fourth requirements.

II. THE ISSUE IN THE PRIOR ADJUDICATION WAS NOT "IDENTICAL TO THE ISSUE PRESENTED IN THE PRESENT ACTION"

A. The Plaintiffs have misrepresented two crucial facts.

Plaintiffs have significantly misstated the facts surrounding the enactment of Ordinance 1722 and the decision of the state Circuit Court of the County of Saint Louis *Reynolds*. Defendants assume that this is the result of unintentional error on Plaintiffs' part. Nevertheless, Plaintiffs' errors are not inconsequential. There are two particularly salient misstatements in their Memorandum in Support of Plaintiffs' Motion for Summary Judgment: (1) Plaintiffs erroneous claim that 1722 was drafted to reflect the *Reynolds* judgment, and (2) Plaintiffs' erroneous claim that the *Reynolds* court reviewed the "penalty" provision in Ordinance 1722. These two misstatements are explained below.

First, Plaintiffs make the following claim regarding Ordinance 1722 on the front page of their Memorandum: "The City made the Employer Ordinance contingent on the outcome of any appeals because it recognized that the Ordinance fell within the scope of the *Reynolds* judgment." Memo. Supp. Pl. Mtn. Summ. J., 1. This claim is obviously erroneous, because the *Reynolds* judgment had not yet been rendered when the City enacted Ordinance 1722. The Valley Park Board of Aldermen passed Ordinance 1722 on February 5, 2007. On February 14, 2007, Ordinance 1722 was approved by the Mayor. On the same day, Valley Park Ordinance No. 1724 was also enacted, amending the effective date of Ordinance No. 1722. However, the *Reynolds* Court did not rule until March 12, 2007, nearly a month after Ordinance 1722 was enacted. Thus, it would have been impossible for the City to "recognize[] that the Ordinance fell within the scope of the *Reynolds* judgment," because the *Reynolds* judgment did not yet exist.

The actual reason that the effective date of Ordinance 1722 was drafted the way that it was, is that the City expected (incorrectly) that the plaintiffs in *Reynolds* would amend their Petition to include Ordinance 1722 and remove the references to the (repealed) Ordinances 1708 and 1715. The City did not anticipate that the *Reynolds* plaintiffs would instead ask the Circuit Court of the County of Saint Louis to adjudicate the validity of the two repealed ordinances and to refrain from adjudicating the validity of Ordinance 1722. But that is exactly what the *Reynolds* plaintiffs did. And to the City's surprise, Judge Wallace of the Circuit Court of the County of Saint Louis agreed to the *Reynolds* plaintiffs' request to review two moot ordinances while declining to rule on the current ordinances. The resulting ambiguity in

the wording of Ordinance 1722's effective date stemmed from the City's incorrect expectation that Ordinance 1722 would be reviewed by the court prior to any final ruling being issued.

Plaintiffs' second misstatement concerns the scope of Judge Wallace's decision in *Reynolds*. Plaintiffs brazenly claim that "the *Reynolds* court has already held that the penalty provision of the Employer Ordinance [1722] violates Missouri law." Memo. Supp. Pl. Mtn. Summ. J., 2.[1] Revealingly, Plaintiffs do not offer any citation to the *Reynolds* opinion in support of this assertion. In fact, the Reynolds court confined itself to the issues of (1) whether Ordinances 1708 and 1715 were moot, (2) whether specific provisions of those ordinances were inconsistent with state law. The only provision concerning business permits that Judge Wallace ruled upon was the original provision found in Ordinance 1708, which contained a provision denying approval or renewal of a business permit "for a period of not less than five (5) years from its last offense." Ordinance 1708 § 2. It was this five-year-minimum denial of a business permit that Judge Wallace found excessive. In her order, she stated it clearly: "Ordinance No. 1715 conflicts with Mo.R.Stat. § 79.470 in that it penalizes a violation of its provisions by … forcing a business to forego a business permit, or renewal of a business permit, for a period of 'not less than five (5) years.'" *Reynolds v. Valley Park*, No. 06-CC-3802, slip op. at 6-7 (¶10). (Judge Wallace mistakenly indicated that the five-year provision was located in Ordinance 1715, when it was actually located in Ordinance 1708).[2] The *Reynolds* decision is quite clear in this regard. The only provision of Ordinance 1708 or 1715 concerning business permits that the *Reynolds* court held to be unauthorized by state law was the five-year-minimum denial of a business permit found in Ordinance 1708. No such provision exists in Ordinance 1722. Accordingly, the court only enjoined the enforcement of the repealed ordinances.

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[1] Plaintiffs have repeatedly used the phrase "penalty provision" to describe the mechanism by which Section 4.B of Ordinance 1722 operates to temporarily suspend a business entity's business permit if the business entity fails to correct a violation of Ordinance 1722 within the required period of time. Defendants disagree with this characterization of Section 4.B. The suspension of a business entity's business permit while the business entity is engaged in a violation of law is not a "penalty" in the normal sense of the word. Rather, it is a condition governing the retention of a business permit. The City suspends the business permit as long as the knowing violation of federal immigration law persists, under Sections 4.B(3-6).

[2] Judge Wallace also mentioned the same provision of Ordinance 1708 in the preceding paragraph of her decision: "Ordinance No. 1708 conflicts with Mo.R.Stat. § 79.470 in that it provides for a fine of 'not less than Five Hundred Dollars ($500.00),' and the loss of a business permit (or its renewal) for a violation of its provisions." *Reynolds v. Valley Park*, No. 06-CC-3802, slip op. at 6 (¶9).

B. The *Reynolds* plaintiffs repeatedly declined to seek a ruling on Ordinance 1722.

During the period between the passage of Ordinance 1722 by the Valley Park Board of Aldermen on February 5, 2007, and the hearing before the Circuit Court of the County of Saint Louis, counsel for Defendant repeatedly offered to consent to the *Reynolds* plaintiffs amending their petition to address Ordinance 1722 (and its companion Ordinance 1721, concerning harboring in rental units). Defendants assumed that Plaintiffs would not wish to seek a ruling on a repealed ordinance when a new and different ordinance was in place. Strangely, the *Reynolds* plaintiffs repeatedly declined this invitation and instead pushed forward to seek a ruling on the more vulnerable repealed ordinances. At the March 1, 2007, hearing before the Circuit Court of the County of Saint Louis, counsel for Defendant reiterated under oath that such an offer had been made to the *Reynolds* plaintiffs.

> Q: …[D]id the City of Valley Park and the Defendants offer to substitute Ordinance 1721 and 1722 in place of 1708 and 1715 and have the Court's preliminary injunction apply to it?
> A: Yes Sir
> …
> Q: And that offer was not accepted?
> A: That's correct.

Transcript of Court Proceedings, Circuit Court of the County of Saint Louis, March 1, 2007 (Plaintiffs' Exh. I attached to Pl. Statement of Uncont. Mat. Facts) (hereinafter "Transcript of March 1, 2007, hearing"), at 47-48. During that interchange, Judge Wallace specifically acknowledged that she was aware that the offer had been made by Defendant: "But the Court does know that you all made that offer." *Id.*

Counsel for the *Reynolds* plaintiffs also made clear at the March 1, 2007, hearing that only Ordinances 1708 and 1715 were before the court: "But the law is clear that this court can and should decide the validity of the entirety of both Ordinances 1708 and No. 1715 on any ground that this court believes that it should be voided." *Id*. at 18. And that is precisely what the court did, limiting its adjudication only to those ordinances.

Plaintiffs cannot have it both ways. As one of the *Reynolds* plaintiffs, Jacqueline Gray expressly and repeatedly declined to seek adjudication of Ordinance 1722, well aware of the fact that Ordinance 1722 is not vulnerable to the challenges raised against Ordinance 1708 and Ordinance 1715. The *Reynolds* court

so limited its review. Now Plaintiffs seek to expand the *Reynolds* holding to encompass Ordinance 1722. Plaintiffs' bait-and-switch game is clever, but it is not sufficient to preclude an Article III Court of the United States from adjudicating an issue that was never presented to a state court.

C. The *Reynolds* Court expressly limited its review to Ordinances 1708 and 1715.

During the March 1, 2007, hearing, the Circuit Court of the County of Saint Louis was quite clear that it was limiting its inquiry to Ordinances 1708 and 1715. The court stated that it was so limiting itself at the commencement of the hearing: "We're going [to] today have a brief argument on whether or not the Court can consider if 1708 and 1715 are void or that the repeal of those two ordinances takes that issue out [of] the Court's hands as being moot, and then we're going move to Plaintiffs' motion for judgment…." Transcript of March 1, 2007, hearing, 5.

Ordinance 1722 was involved only with respect to mootness. Specifically, Defendant had argued that the repeal of Ordinances 1708 and 1715, coupled with their replacement by Ordinances 1721 and 1722, rendered moot any challenge to the validity of the former ordinances. The *Reynolds* plaintiffs responded that under the precedent of *Northeastern Florida Chapter of the Assoc. Gen. Contractors of America v. City of Jacksonville*, 508 U.S. 656 (1993), the court could nonetheless review the repealed ordinances as long as they were "sufficiently similar" to the new ordinances, and the "challenged conduct" might therefore continue. *Id*. at 662-63, n.3. Transcript of March 1, 2007, hearing, 19-20. Accordingly, there was some discussion at the March 1, 2007, hearing concerning the scope and nature of Ordinances 1721 and 1722. See *id*. at 14-25, 48-55.

It is in this respect that Plaintiffs in the case at bar misleadingly quote from the decision of the Circuit Court of the County of Saint Louis in *Reynolds*. Attempting to convince this Court that "Ordinance No. 1721 and Ordinance No. 1722 were expressly the subject of oral argument, testimony and consideration by the [*Reynolds*] court," Memo. Supp. Pl. Mtn. for Summ. J., 4, Plaintiffs omit important words from their quotation of the *Reynolds* opinion. Plaintiffs offer the following deceptively-altered quotation to suggest that the Reynolds court reviewed the validity of Ordinances 1721 and 1722:

> Without deciding whether Defendant City of Valley Park has effectively repealed Ordinance No. 1708 and Ordinance No. 1715, … the Court finds the new ordinances [Ordinance No. 1721 and Ordinance No. 1722] are "sufficiently similar" to the old ordinances in that they are aimed at the same people and conduct and include some of the same penalties. Given that the substance of the new ordinances is the same, the Court concludes the challenged conduct will continue.

Memo Supp. Pl. Mtn. for Summ. J., 4 (quoting *Reynolds*, slip op. at 5) (bracketed text inserted by Plaintiffs). The smoking ellipsis conceals what the Reynolds court was actually concerned about—mootness under the *City of Jacksonville* precedent. The full text in the *Reynolds* opinion reads as follows:

> Without deciding whether Defendant City of Valley Park has effectively repealed Ordinance No. 1708 and Ordinance No. 1715, *the Court finds and concludes under R.E.J., Inc. v. City of Sikeston, 142 S.W.3d 744 (Mo. banc. 2004), and Northeastern Florida Chapter of the Assoc. General Contractors of America v. City of Jacksonville, 508 U.S. 656, 661-62 (1993), this case is not moot. When a party files suit seeking to void a local ordinance, a defendant cannot unilaterally moot the litigation by repealing the ordinance. Id. Furthermore,* the Court finds the new ordinances are "sufficiently similar" to the old ordinances in that they are aimed at the same people and conduct and include some of the same penalties. Given that the substance of the new ordinances is the same, the Court concludes the challenged conduct will continue. City of Jacksonville, supra, 508 U.S. at 662-63 and n. 3.

Reynolds, slip op. at 5) (emphasis added). The italicized words were removed by Plaintiffs. They illustrate exactly what the *Reynolds* court was determining—similarity for the purpose of determining mootness under the *City of Jacksonville* test. The court did not, as Plaintiffs claim, "consider[]" the validity of Ordinance 1722 in any other respect.

Moreover, Plaintiffs pointedly fail to quote the following statement of fact from the *Reynolds* opinion: "Defendant has represented to this Court that it recently repealed Ordinance No. 1715, and admitted into evidence the new ordinances *only for the purpose of its argument on mootness*. *Plaintiffs have not amended their pleadings to put the issue of the validity of the new ordinances before the Court*." *Reynolds*, slip op. at 3 (¶10) (emphasis added). That simple fact—that the validity of the new ordinances under state law was never before the *Reynolds* court—is one that Plaintiffs cannot avoid.

D. The Court in *Reynolds* did not adjudicate any issue applicable to Ordinance 1722.

Plaintiffs acknowledge that the *Reynolds* court was aware of Ordinance 1722's enactment, yet it did not enjoin Ordinance 1722. Rather, the *Reynolds* court concluded that repealed Ordinances 1708 and

1715 were not moot and reached the merits of challenges *only to the repealed ordinances* on three narrow state law grounds: (1) that the fine of not less than five hundred dollars for knowingly leasing a rental unit to an illegal alien in Ordinance 1708 was excessive; (2) that the provisions of Ordinance 1715 were in conflict with Missouri law requiring 30 days' notice and judicial process before a landlord may evict a tenant; and (3) that certain other provisions in Ordinances 1708 and 1715 (including the minimum-five-year denial of a business permit in Ordinance 1708) exceeded the authority of the City under state law. *Reynolds*, slip op. at 6-7 (¶¶ 9-11).[3]

Plaintiffs would have this Court believe that the Reynolds court "consider[ed]" and ruled upon the broad question of whether a municipality may suspend a municipal business permit while the permit holder is in violation of federal immigration law by knowingly employing an unauthorized alien. As noted above, the only employment provision that the *Reynolds* court found to be impermissible under state law was the *five-year-minimum* denial of a business permit, found in Ordinance 1708 § 2. As the *Reynolds* court stated, the repealed ordinance conflicted with Missouri law because it "penalizes a violation of its provisions … by forcing a business to forego a business permit, or renewal of a business permit, for a period of 'not less than five (5) years.'" *Reynolds*, slip op. at 6-7 (¶ 10). It is important to note that the *Reynolds* Court *specifically quoted* the five-year-minimum denial of a business permit found in Ordinance 1708 § 2. In the preceding paragraph, the *Reynolds* court equated this five-year-minimum denial to a "loss" of the permit, not merely a suspension of the permit. *Reynolds*, slip op. at 6 (¶ 9). The Court did not in any way consider or adjudicate a challenge to the temporary suspension of a business permit only while the business entity is in violation of federal law, as Ordinance 1722 § 4.B(4-6) stipulates. Nor did the Court consider the twenty-day suspension for second or subsequent violations under Ordinance 1722 § 4.B(7).[4]

[3] Defendant's Memo in Support of Defendant's Motion for Summary Judgment of August 10, 2007, mistakenly states that there were two (not three) narrow state law grounds at issue in *Reynolds*.

[4] If this Court were to regard the 20-day suspension for second or subsequent violations as so punitive as to somehow fall within the *Reynolds* decision and therefore be precluded (even though the *Reynolds* decision was specifically concerned only with the five-year-minimum denial of a business permit in Ordinance 1708), then the appropriate action would be to sever Section 4.B(7) from Ordinance 1722 and adjudicate the remainder of Ordinance 1722 on its merits. However, Defendant strongly disagrees with the notion that a 20-day suspension under the complex process and protections of Ordinance 1722 can be considered "identical" to the five-year-minimum denial of Ordinance 1708 and therefore be precluded by a judgment on the latter.

Indeed, only at the very end of the March 1, 2007, hearing did the issue of the denial of business permits even come up. In the closing minutes of the hearing, the Court reiterated that it was *only* considering the merits of challenges to two aspects of the harboring sections of Ordinances 1708 and 1715:

> THE COURT: All right. So to be clear then, the Court did let everyone know that I was concerned about the excessive fines part in 1708 and the more than 30 day—or less than 30 day notice to tenants contained in the 1715, or vice-versa, I'm not sure which. Your position is the Court can sever those out?
> MR. LEONATTI: Yes.

Transcript of March 1, 2007, hearing, 87-88. This, along with the mootness question, was all that counsel for Defendant had been notified would be considered at the March 1, 2007, hearing. Then counsel for the *Reynolds* plaintiffs interjected and urged the Court to also consider adjudicating the five-year-minimum employer provision of Ordinance 1708:

> MS. WISNIEWSKI: Well, Your Honor, first of all, our position is that there's excessive fines for both the employment provision and the housing provision. I mean, again, you know, you come down to what has the State authorized as a punishment that a municipality can dish out. They haven't authorized a municipality to revoke a business license with no notice and then say, *We're never going to give you one for five years*. That is not an acceptable penalty.

Transcript of March 1, 2007, hearing, 88 (emphasis in original). It is important to note that counsel for Plaintiffs made this request to the court only to specifically adjudicate the five-year-minimum denial of business permits in Ordinance 1708. *See also id*. at 82. Counsel's reference to the revocation "with no notice" (which is a plausible reading of Ordinance 1708, but not of Ordinance 1715) also indicates that she was referring to Ordinance 1708. Eleven days later, the *Reynolds* court followed the prompting of counsel for the *Reynolds* plaintiffs and expanded the scope of the court's review specifically to include the five-year business permit denial provision of Ordinance 1708. *Reynolds*, slip op. at 6-7. The court did not review the validity of the more complex business permit provisions in Ordinance 1715. *Id*.

In their Memorandum, Plaintiffs repeatedly mischaracterize the decision of the *Reynolds* court, claiming that the *Reynolds* court declared the business permit suspension provisions of Ordinance 1715 were inconsistent with state law. See Memo. Supp. Pl. Mtn. for Summ. J., 10. However, one need only read the *Reynolds* opinion to see that that court did no such thing. In paragraph 9 of the court's conclusions

of law, the Court states that "Ordinance No. 1708 conflicts … in that it provides for a fine of 'not less than Five Hundred Dollars ($500.00),' and the loss of a business permit (or its renewal) for a violation of its provisions." *Reynolds*, slip op. at 6. Plainly, in this paragraph the court was referring to Ordinance 1708. Then, in paragraph 10 of the court's conclusions of law, the court begins by referring to Ordinance 1715 and its harboring sections, but then plainly refers to the business permit section of Ordinance 1708, saying that it "forc[es] a business to forego a business permit, or renewal of a business permit, for a period of 'not less than five (5) years.'" *Reynolds*, slip op. at 6-7. Thus, the court ruled on the rental provisions of both Ordinance 1708 and Ordinance 1715, *but on the employment provision of Ordinance 1708 only*—just as counsel for the *Reynolds* plaintiffs requested. Nowhere does the *Reynolds* decision state that the temporary suspension of a business permit during the period that the business entity is violating federal immigration law by knowingly employing an unauthorized alien is inconsistent with state law.

No matter how Plaintiffs spin the *Reynolds* decision, they cannot meet the "identical" issues requirement for collateral estopel. They also fail to establish that the issue was "unambiguously decided." *State ex rel. Johns v. Kays* 181 S.W.3d at 566. "For declaratory actions … there is preclusive effect only for the matters *actually declared*." *SDDS, Inc. v. State of South Dakota*, 994 F.2d 486, 492 (8th Cir. 1993) (emphasis added). The "identical" issues requirement is just not as flexible as Plaintiffs would like it to be.

> While Missouri courts must find that all four elements exist before collateral estoppel may be properly applied, the first element—that the issue decided in the prior adjudication is identical with the issue presented in the present action—is paramount because it represents the very crux of the doctrine. Inasmuch as the issues before the Pension Board and the Commission were not identical, the elements of collateral estoppel were not satisfied. Point II is denied.

Shelton v. City of Springfield, 130 S.W.3d 30, 36 (Mo. App. S.D. 2004). When it comes to collateral estoppel, close is not good enough. Exactly the same issue must be adjudicated.

E. Ordinance 1722 Differs Significantly from Ordinances 1708 and 1715.

Issue preclusion can only occur where "the issue in the present case [is] *identical* to the issue decided in the prior adjudication." *State ex rel. Johns v. Kays* 181 S.W.3d at 566 (emphasis added). In addition, "[t]he doctrine applies only to those issues that were necessarily and *unambiguously* decided." *Id.*

(emphasis added). Plaintiffs cannot come close to meeting the "identical" standard that is necessary for issue preclusion to occur. As noted above, the *Reynolds* court only mentioned the five-year denial of business permits found in Ordinance 1708 § 2. There is no identical provision to be found in Ordinance 1722. It is beyond any doubt that the *Reynolds* court did not rule on any specific provision in 1708 or 1715 that is *identical* to a provision found in Ordinance 1722.

Preclusion applies only when there has been "no change in controlling facts or legal principals since the state court action." *U.S. v. Stauffer Chemical Co.*, 464 U.S. 165, 169 (1984); *Montana v. U.S.,* 440 U.S. 147, 159 (1979). Where an amended ordinance "is different in *any* presently material respect" from the original ordinance, *res judicata* does not apply to a subsequent facial challenge. *JBK, Inc. v. Kansas City*, 641 F. Supp. 893, 900 (D. Mo. 1986) (emphasis added).[5] Ordinance 1722 differs markedly from the ordinances at issue in *Reynolds*. As this Court recognized in its May 21, 2007, Order, "Although the ordinances are similar, the cases are distinct…." Slip. op. at 1.

The specific distinctions are numerous. Nothing in the text of Ordinance 1708 is repeated in the text of Ordinance 1722. One of the most significant changes between Ordinance 1715 and 1722 (as amended by Ordinance 1732 on June 4, 2007) is the addition of the word "knowingly" in Section 4.A: "It is unlawful for any business entity to *knowingly* recruit, hire for employment, or continue to employ, or to permit, dispatch, or instruct any person who is an unlawful worker to perform work in whole or in part within the City." Ordinance 1722 § 4.A. Clearly, the addition of a scienter requirement is a material one.

Moreover, none of the many provisions in Section 5 of Ordinance 1722 are found in either of the earlier ordinances (Ordinance 1708 and 1715). Section 5.A stipulates that the ordinance applies only prospectively to hires after the effective date of the ordinance. Section 5.B describes in detail three actions that a business entity may take to correct a violation of the ordinance once the business entity is notified of

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[5] Plaintiffs attempt to twist this long-standing principle by claiming that since Ordinance 1722 was *in existence* at the time the *Reynolds* court ruled, there was no "change in controlling facts or legal principles." Memo. Supp. Pl. Mtn. Summ. J., 12. This argument is transparently incorrect. The inquiry concerns what is *before the court*, not the facts outside of the court's scope of review. As this Court has put it, the question is whether "the ordinance *before this court*—either in the three sections mentioned or as a whole—is different in any presently material respect than the one *before the state court*." *JBK*, 641 F. Supp. at 899 (emphasis added). The *Reynolds* court expressly declined to review the legal issue of the validity of Ordinance 1722; so the issue was plainly not "before the state court."

a violation. Section 5.C provides that no enforcement occurs if federal verification of an individual's work authorization is delayed for any reason. Section 5.D offers business entities and employees an opportunity to challenge any enforcement action before Board of Adjustment of Valley Park, subject to appeal to the Circuit Court of the County of St. Louis. And Section 5.E requires that all city officials, including the Board of Adjustment, must defer to the federal government's determinations of any alien's work authorization status. Ordinance 1722 §§ 5.A-E. Most importantly, *none* of the specific provisions in Ordinances 1708 and 1715 that the *Reynolds* Court found fault with are present in Ordinance 1722. *Reynolds*, slip op. at 6-7. Therefore, the factual and statutory scenario is now materially different.

In their Memorandum, Plaintiffs attempt to minimize these distinctions between Ordinance 1715 and 1722, asserting that "the addition of those provisions is not material to the issue of whether the penalty provisions violate Missouri law." Memo. Supp. Pl. Mtn. for Summ. J., 10. However, Plaintiffs offer no explanation for their assertion. If they attempted one, it would be difficult. The knowledge requirement of Section 4.A reduces the scope of potential violations considerably. The addition of the provisions of Section 5 significantly affects the duration of any business permit suspension that might occur. If the business entity believes that a mistake has been made regarding the work authorization of an employee, the business entity may seek second and successive verifications of work authorization by the federal government, providing any additional information that the employee offers. During this reverification period, the business entity's permit cannot be suspended. Ordinance 1722 § 5.B.2. This reduces the duration of any suspension of a business permit that might occur. A business permit can only be suspended *after* the business entity has had the opportunity to pursue reverification of the work authorization of the employee in question.

Section 5 of Ordinance 1722 also reduces the scope of possible employees whose employment might lead to the suspension of a business permit. The prospective application restriction of Section 5.A is more than it might appear at first glance. The obligations of Ordinance 1722 only apply to the hiring of *future* employees. This ensures that no employer is caught unawares and faces the suspension of a business permit for the hiring of an unauthorized alien in the past. This drastically reduces the scope of the

suspension of business permits that might occur under Ordinance 1722. It is simply implausible to say that these changes do not materially affect the suspension of business permits.[6]

III. DEFENDANT DID NOT HAVE "A FULL AND FAIR OPPORTUNITY TO LITIGATE THE ISSUE"

The fourth necessary condition for a court to find issue preclusion under Missouri law is that "the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior suit." *Allstate Ins. Co. v. Blount*, 491 F.3d 903, at *13 (8th Cir. 2007). *State ex rel. Johns v. Kays* 181 S.W.3d at 566. Plaintiffs have not met this condition. Here again, Plaintiffs misstate the facts. Plaintiffs claim without any reference to any filings in *Reynolds* that, "The issue of whether Missouri law authorize the City to impose the indefinite suspension of a business license for a violation of the ordinance was fully briefed and argued before the *Reynolds* court." Pl. Memo Supp. Mtn. for Summ. J., at 8. Plaintiffs make this false assertion without any reference to any briefs and without any reference to the hearings transcripts.

This assertion is particularly strange, since Plaintiffs presumably have access to all of the pleadings and memoranda that were submitted in the *Reynolds* case. The question of whether the five-year-minimum denial of a business permit under Ordinance 1708 was consistent with Missouri state law was never briefed by Defendant at any point during the *Reynolds* case. Nor did Defendant brief the issue of whether the employment provisions of Ordinance 1715 were consistent with Missouri state law. And Defendant obviously did not brief the issue of whether Ordinance 1722 was consistent with Missouri state law before the *Reynolds* court issued its decision on March 12, 2007.

That is because the *Reynolds* court had not yet scheduled any briefing or hearing on the merits of these questions. According to Judge Wallace, herself, at the time of the March 1, 2007, hearing she was not intending to reach any issues other than the mootness of Ordinances 1708 and 1715, as well as the merits of two specific state law challenges to the rental provisions therein (whether the minimum $500 fine

[6] Plaintiffs also assert that the City Attorney at the March 1, 2007, hearing agreed with Plaintiffs that the "substance" of Ordinance 1722 was virtually identical to the substance of Ordinance 1715. Once again, Plaintiffs take the quotation out of context. The City Attorney had stated immediately beforehand that Ordinance 1722 included "amendments" to the employment provisions of Ordinance 1715, including "making it prospective only in its application" and the addition of "an appellate process." The City Attorney's reference to the "substance" of Ordinance 1715 was obviously

for violation of the rental provisions of Ordinance 1708 was excessive, and whether the eviction procedures of Ordinance 1715 failed to provide 30 days' notice to tenants). In the closing minutes of the hearing, Judge Wallace reiterated that she was *only* intending to consider the merits of the challenge to two aspects of the harboring sections of Ordinances 1708 and 1715:

> THE COURT: All right. So to be clear then, the Court did let everyone know that I was concerned about the excessive fines part in 1708 and the more than 30 day—or less than 30 day notice to tenants contained in the 1715, or vice-versa, I'm not sure which. Your position is the Court can sever those out?
> MR. LEONATTI: Yes.

Transcript of March 1, 2007, hearing, 87-88. This, along with the mootness question, was all that counsel for Defendant had been notified would be considered at the March 1, 2007, hearing. It was after this statement by Judge Wallace that counsel for the *Reynolds* plaintiffs interjected and urged the court to also consider adjudicating the five-year-minimum employer provision of Ordinance 1708. Transcript of March 1, 2007, hearing, 88. The court did not indicate in response whether it would adjudicate that issue. *Id*., 88-93. A few minutes later, the hearing ended. During the hearing, the *Reynolds* court did not request any supplemental briefing on the issue of whether any of the employment provisions of Ordinances 1708 and 1715 exceeded the City's authority under state law. *Id*., *passim*. Nor did the *Reynolds* court request any briefing on the subject after the hearing ended. Then, eleven days later, the Court ruled that the five-year-minimum denial of a business permit in Ordinance 1708 was not permitted under Missouri law. *Reynolds*, slip op. at 6-7.

As noted above, Plaintiffs do not, and cannot, point to any document in which the issue was "fully briefed," as they claim. For the record, Defendants have attached as exhibits the only pre-hearing memoranda that Defendant submitted to the Circuit Court of the County of St. Louis prior to the March 1, 2007, hearing. Exhibit A is the Defendants' Trial Brief of February 22, 2007. This 11-page brief was limited solely to the questions of whether Ordinances 1708 and 1715 were moot, whether a Sunshine Act violation had occurred (a claim which was as baseless then as it is now), and whether it was possible for the

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a reference only to those provisions of 1715 that were carried over into Ordinance 1722, not a reference to Ordinance 1722 as a whole. Transcript of March 1, 2007, hearing, 49. In any event, the ordinances speak for themselves.

Reynolds plaintiffs to recover attorneys' fees. *The issue of whether the employment provisions of Ordinances 1708 and 1715 were consistent with state law appeared nowhere in the trial brief*. Exhibit B is the Defendants' list of Citations for Defendants' Trial Brief of February 22, 2007. Again, none of the citations concern the validity of the employment provisions under state law. Exhibit C is the Defendants' Memorandum in Opposition to Plaintiffs' Motion for Judgment on the Pleadings, also submitted on February 22, 2007. This four-page memorandum addressed the mootness issue. *Id*., 1-2. Defendants also defended the authority of the City to enact the rental provisions of Ordinance 1708 and 1715 on pages 3-4 of the memorandum—because that was the only issue on the merits of the *Reynolds* plaintiffs' petition that Defendants expected the court to cover. There is only a passing mention of the employment provisions at the bottom of page 2 (offered as an example of how they, like the rental provisions, "also mirror the State's law"). This brief reference to the employment provisions and similar provisions of state law was *only three sentences long*. The three sentences did not attempt to explain why the suspension of a business permit is authorized under Missouri law and did not present the extensive case law supporting Defendant's position in the case at bar—case law that required more that three pages of briefing in Defendant's August 10, 2007, Memorandum for this Court. The Defendants did not attempt defend the employment provisions of Ordinances 1708 and 1715 against the *Reynolds* plaintiffs' state-law claims, because the Defendants understood that the Court would not address those claims at the March 1, 2007, hearing.

Finally, imagine for the sake of argument that the *Reynolds* court had requested briefing on the question of whether Ordinance 1708's five-year-minimum denial of a business permit was consistent with state law. That would have been a very different question than whether the longer and multifaceted employment provisions of Ordinance 1722 are consistent with state law. In sum, the issue simply cannot be described as "fully and fairly briefed" in the prior decision. There was no briefing on it whatsoever.

CONCLUSION

Because Plaintiffs have failed to meet the first and fourth requirements for collateral estoppel to occur, Defendant requests that this Court reject Plaintiffs' Motion for Summary Judgment and proceed to a mid-September hearing on Defendants Motion for Summary Judgment on the merits of Plaintiffs' case.

Respectfully submitted by

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The undersigned hereby certifies that a copy of the foregoing was served on Plaintiffs' counsel of record, listed below, by operation of the Court's ECF/CM system, this 6th day of September, 2007:

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

STEPHANIE REYNOLDS, et al.	)	
Plaintiffs,	)	
	)	
AND	)	CAUSE NO. 06-CC-3802
	)	DIVISION NO. 13
JAMES ZHANG,	)	
	)	
INTERVENOR,	)	
	)	
V.	)	
CITY OF VALLEY PARK, MO.,	)	
et al.,	)	
Defendants	)	

DEFENDANTS' TRIAL BRIEF

Defendants have elected not to brief the issues of the constitutionality and whether the City of Valley Park has statutory authority to enact Ordinances No. 1708 and 1715. This is because both ordinances have been repealed by the Board of Aldermen and new ordinances adopted. These ordinances are "moot" for the reasons set forth below. The Plaintiffs have alleged a violation of the Open Meetings Law concerning Ordinance No. 1715. If the Court determines that the statutory authority and constitutionality issues should be addressed, Defendants will file a supplemental brief.

Defendants will brief the issues of:

- The questions remaining to be decided by the Trial Court as a result of Ordinance No. 1715 being repealed;
- The passage of Ordinance No. 1708 and 1715 and whether a violation of the Missouri Open Meetings Law occurred;
- Whether attorney's fees may be recovered from the City of Valley Park under the Missouri Declaratory Judgment Act
- Whether attorney's fees may be recovered from the individual members of the Board of Aldermen under the Missouri Open Meetings Law.

Issues to be decided by the Trial Court as a result of the Repeal of Ordinance No. 1715

The question of the validity/constitutionality of Ordinances No. 1708 and 1715 is moot due to their repeal. There is no actual controversy before the Court with regard to the two prior ordinances except for the allegations concerning the Sunshine Law.

Defendants informed the Court a little over two weeks ago that the Board of Aldermen was going to consider revisions to Ordinance No. 1715. This ordinance was the subject of a restraining order issued by this court and has never been enforced. The restraining order was issued the day after No. 1715 was approved by the Board

of Aldermen. The Board of Aldermen passed Ordinances No. 1721 and 1723, which repealed No. 1715. Plaintiffs' lawyer took the position, in a letter to this Court, that No. 1715 was not repealed. As a result, the Board met again to adopt language to make it clear that No. 1715 was repealed.

A storm of protest ensued from Plaintiffs' lawyers based on the Missouri Supreme Court's decision in *R.E.J. INC. v. City of Sikeston, 142 SW3d 744 (Mo. 2004).* This case involved a petition to declare a zoning ordinance void and unenforceable. An adjoining landowner intervened in the case. The City repealed the Ordinance before the case went to trial and the Circuit Court dismissed the lawsuit. Plaintiff sought attorney's fees and a declaration that the passage of the zoning ordinance violated the Open Meetings Law. The Supreme Court held that the repeal of the zoning ordinance could not abolish Plaintiff's right to pursue a violation of the Open Meetings Law and to have the question of whether the Law was "purposely" violated determined. This was the only issue before the Supreme Court. Obviously, the Court held that you could not make a violation of the Open Meetings Law go away by repealing the ordinance which was the subject of the violation. This is consistent with an earlier decision

involving the City of St. Ann, where it was held that even though an ordinance was repealed which appointed the Mayor to another paid municipal position, plaintiff had standing as a taxpayer to recover the funds paid as salaries under the repealed ordinance. Even though the ordinance creating the new paid position for the Mayor had been repealed, the entire proceeding was not moot. The court needed to decide the salary issue, s*ee Matthew v. St. Ann, 457 SW2d 765 (Mo. Div. II, 1970).*

With regard to Ordinance No. 1715, the trial court has to determine if the Sunshine Law was violated when the ordinance was approved by the Board of Aldermen and signed by the Mayor.

At trial, the evidence will be clear that there was no violation of the Sunshine Law.

The City of Valley Park posted the required notice, within the required time, in the usual location. *Section 610.020 RSMo.* describes the procedure which must be followed in providing notice to the public. This includes posting the Notice on a bulletin board or other prominent place at least twenty-four (24) hours before the meeting, exclusive of weekends and holidays.

Subparagraph Seven (7) of Section 610.020, requires a journal or record to be kept which shall include any votes taken.

The City of Valley Park is a City of the Fourth Class under Missouri law. *Section 79.130 RSMo.* sets forth the procedure required to pass an ordinance. The proposed bill may be read by "title only" twice and approved at the meeting where it is first read, if the bill is available for public inspection prior to consideration by the Board of Aldermen. Most municipalities satisfy this requirement by posting the text of the bill with the Agenda for the Board's meeting.

The evidence will verify that the City Clerk kept a record of the proceedings and recorded the vote of the Aldermen in the required journal.

The actual facts supporting Plaintiffs' claimed violation are vague but it is assumed that it deals with the procedure used in approving the ordinance.

The Ordinance was posted with the notice of the meeting. Thus, state law permitted the proposed ordinance to be read by "Title Only", without reading the text of the proposed ordinance, and passage to occur after two readings by "Title Only."

The remaining issues in Plaintiffs' Second Amended Petition are moot. In *Central Moloney Inc., Transformer Div. v. St. Louis*, *527 SW2d 39 (Mo.App.E.D. 1975)* the appellate court discussed the meaning of the word "moot":

> A question is Moot when the question presented for decision seeks a judgment upon some matter which if judgment were rendered could not have any practical effect on any than existing controversy.

If the matter is moot, there is no actual controversy for the court to decide. A clear example is found in *C.C. Dillon Co. v. City of Eureka, 12 SW3d 322 (Mo. 2000).* This case involved a Declaratory Judgment action concerning legislation regulating billboards. The law was repealed and replaced by new legislation. The Declaratory Judgment action concerning the old billboard law was moot. There was not an actual controversy.

Another example of the lack of an actual controversy caused by the repeal of a statute is *Bank of Washington v. McAuliffe, 676 SW2d 483 (Mo. 1984).*

What is the practical effect of a ruling on Ordinance No. 1715 on any issue other than the Sunshine Law? There is no existing controversy, and the Court should focus its attention on the new Ordinance.

Defendants have offered to substitute the new ordinances in place of No. 1715 for the Court's consideration and to continue the restraining order. This effort to focus the Court's attention on the real issue was not acceptable to the Plaintiffs. Rather, the armada of Plaintiffs' lawyers are more interested in recovering attorney's fees for their "pro bono" work.

The Passage of Ordinance No. 1708 & 1715 did not violate the Open Meetings Law.

Assuming Plaintiffs are granted leave to amend their Second Amended Petition by interlineations, the allegations concerning the Open Meetings law are found in Paragraph Twenty-Six (26) (d). It alleges that the defendants discussed and deliberated the enactment of Ordinance No. 1715 without notice to the public, without allowing for public access, and without recording or journaling the events.

This paragraph does not set forth any facts on which these allegations are based. It should also be noted that these allegations are made as to Ordinance No. 1715, only, and not No. 1708.

The deliberation and passage of No. 1715 could not have been a surprise to the Plaintiffs; they obtained a restraining order from this Court the day after the ordinance was passed.

Section 79.130 RSMo. permits a Fourth Class City to post the ordinance, and then read by "title only" at the same meeting before passage. There are no facts which support a claim that this did not occur in a proper manner. The Plaintiffs have also been provided with the minutes recording the vote on the ordinance.

Section 610.020 RSMo. sets forth the requirements for posting notice of a public meeting. It must be given twenty four (24) hours in advance, exclusive of weekends and holidays, unless good cause permits a shorter notice period. The Notice/Agenda should be posted on a bulletin board or other prominent place which is easily accessible to the public. These requirements were met by the City of Valley Park.

Attorney's Fees cannot be recovered against the City of Valley Park pursuant to the Missouri Declaratory Judgment Act because it is a political subdivision of the State of Missouri

Defendants have previously filed with the Court a Memorandum in support of their Motion to Dismiss Plaintiffs Claim for Attorney's Fees. The Court has carefully reviewed this issue and Defendants will not occupy space with a redundant argument.

Suffice it to say that *Baumli v. Howard County, 660 SW2d 702 (Mo. 1983) and Tillis v. City of Branson, 975 SW2d 949, note (1),*

(Mo.App.S.D. 1998) are the controlling precedent. The City of Valley Park is a political subdivision of the state of Missouri. The Board of Aldermen, since they were sued in their official capacity, have already been dismissed as Defendants with regard to the Declaratory Judgment action.

Attorney's Fees cannot be recovered from the City of Valley Park or the Board of Aldermen because there was not violation of the Missouri Open Meetings Law.

Paragraph 26(d) of Plaintiffs' proposed amendment by interlineations alleges that the Board of Aldermen committed a "knowing" violation in the passage of Ordinance No. 1715, only.

The "knowing" language comes from *Section 610.027.3 RSMo.* This permits the Court to consider an award of attorney's fees if a member of the governmental body or the governmental body knowingly violated the Open Meetings Law. The leading case in this area is *Spradlin v. City of Fulton, 982 SW2d 255 (Mo. 1998).* It requires more than mere intent to engage in conduct which violates the law. The Plaintiff has to demonstrate conscious design, intent, or plan to violate the law and to do so with awareness of the public consequences, *id. at P. 262.*

At the time of the decision in *Spradlin,* the statute used the word "purposely" and the Supreme Court defined "purposely" to mean "intentionally; designedly; consciously; knowingly." *Id. at P. 262 quoting Black's Law Dictionary 1236 (6th ed. 1990).*

In 2004, the General Assembly enacted Senate Bill 1020. This changed "purposely" to "knowingly" as the standard for awarding attorney's fees, and then used "purposely" as the standard to determine if a fine should be imposed under *Section 610.027 RSMo.*

For purposes of the case at bar, these different words are inconsequential because no violations occurred.

CONCLUSION

The only issue before the Court is whether attorney's fees should be awarded to "pro bono" lawyers.

Ordinances No. 1708 and 1715 are moot.

There was no violation of the Open Meetings Law.

Attorney's fees cannot be awarded and collected under the Declaratory Judgment Act against a political subdivision.

Respectfully Submitted,

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Proof of Service

The undersigned certifies that a copy of the foregoing instrument was served by facsimile or e-mail upon the attorneys of record of all parties to the above cause on the 22nd day of February, 2007.

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LIST OF CITATIONS FOR DEFENDANTS' TRIAL BRIEF
REYNOLDS, et al. V. CITY OF VALLEY PARK, et al.
CAUSE NO. 06-CC-3802

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

STEPHANIE REYNOLDS, et al.	)	
Plaintiffs,	)	
	)	
AND	)	CAUSE NO. 06-CC-3802
	)	DIVISION NO. 13
JAMES ZHANG,	)	
	)	
INTERVENOR,	)	
	)	
V.	)	
CITY OF VALLEY PARK, MO.,	)	
et al.,	)	
Defendants	)	

DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS

Plaintiffs armada of attorneys have filed another Motion. They seek a judgment on the pleadings based on the theory that Ordinances No. 1708 and 1715 conflict with Section 79.470; Section 441.060 and 441.233 R.S.Mo., and Missouri's Landlord Tenant Law.

The Motion ignores the fact that Ordinance No. 1715 revised and repealed Ordinance No. 1708.

Plaintiffs' Motion ignores the fact that Ordinance No. 1715 has been repealed and replaced by Ordinances No. 1721 and 1722.

The Plaintiffs are asking the Court to rule on an issue which is moot. The only issue which is before the Court is whether or not the passage of Ordinance No. 1715 violated the Missouri Open Meetings Law.

In reviewing a Motion for Judgment on the Pleadings, the Court has to review the pleaded facts and determine if they are sufficient as a matter of

law to grant judgment. The movant admits for purposes of the motion, the truth of all well pleaded facts in the opposing party's pleadings. It is similar to ruling on a Motion to Dismiss. See *Kraus v. Hy-vee, Inc. 147 S.W.3d 907 (Mo.App. W.D., 2004)* citing *State ex rel. Nixon, v. the American Tobacco Company*, *34 S.W.3d 122, 134 (Mo., 2000)*. Defendants' Amended Answer sets forth the repeal of the Ordinance and that the controversies concerning Ordinance No. 1715 are moot.

The decisions in *Central Moloney, Inc., Transformer Division v. St. Louis*, 527 S.W.2d 39 (Mo.App. E.D., 1975) and *C.C. Dillon Co. v. City of Eureka, 12 S.W.3d 322 (Mo., 2000)* are controlling.

There is not an actual controversy before the Court other than the Sunshine Law allegations. Ordinances No. 1708 and 1715 have been repealed. The issue before the Court with regard to 1715 is whether or not the Open Meetings Law was violated. Curiously, in their Motion for Judgment on the Pleadings, Plaintiffs have abandoned this theory for invalidating the Ordinance.

The Motion ignores the fact that the Ordinances also mirror the State's law with regard to employment. Section 8.283 R.S.Mo. prohibits a state agency from contracting with any individual employer who hires illegal aliens. Section 288.040 R.S.Mo. prohibits illegal aliens from collecting unemployment benefits.

8 U.S.C.S. Section 1324a (H-2) permits a state or local government to enforce a ban on hiring illegal immigrants through licensing or similar laws. In *De Canas, v. Bica*, *424 U.S. 351 (1976)*, the United States Supreme Court upheld the constitutionality of a California statute which forbade the employment of illegal immigrants in the State of California.

If the Court wishes to go beyond the Sunshine Law issue concerning Ordinance No. 1715 and No. 1708, it need look no further than the valid exercise of the police power by a Fourth Class City under Section 79.110 R.S.Mo.. The police power bestows broad authority upon cities to pass ordinances for the health and safety of its citizens. See *Miller v. City of Town & Country*, *62 S.W.3d 431, 437 (Mo.App., 2001).*

In the case of Western District *Charles Ashworth v. City of Moberly*, *53 S.W.3d 564 (Mo.App. 2001)*, the Kansas City Court of Appeals considered the issue of whether a Third Class City could enact an ordinance requiring a landlord to obtain a rental permit. The issuance of the permit was conditioned on inspection of the rental unit and the payment of a fee. One of the theories used in the unsuccessful challenge of the ordinance was the absence of statutory authority.

This argument was soundly rejected based on the Third Class City's proper exercise of its police power under Sections 77.260 and 77.590 R.S.Mo. to establish minimum housing standards. id at P.578.

In the case of *Lewis v. City of University City, 143 S.W.3d 25,* corrected at *2004 Mo.App. Lexis 1119*, the Court upheld the exercise of an implied power under the police power to order a home not to be occupied if it was used for the sale of illicit drugs. The Court of Appeals in reaching its decision held that;

- Ordinances are presumed to be a valid exercise of police power, and the party challenging the Ordinance carries the burden of showing that it is unreasonable;
- A municipal ordinance will be deemed a legitimate exercise of police power if the express requirements of the ordinance bear a substantial and rational relationship to the health, safety, peace

> and general welfare of the citizenry; if reasonable minds could differ whether a specific ordinance has a substantial relationship with the public health, safety, peace, comfort and general welfare, the issue must be decided in favor of the ordinance.

Motions for Judgment on the Pleadings are rarely granted. The ordinances cited in the Motion are moot. If the Court decides it wants to move forward and consider an issue besides the Sunshine Law, it need look no further than the police power to determine that the City of Valley Park has sufficient authority to enact the ordinance.

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Proof of Service

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