

municipality. Packaged and sold as the City's latest attempt to fight "illegal immigration" by criminalizing the unlicensed occupancy of rental housing, Ordinance 2952 was actually borne of a desire on the part of certain Farmers Branch elected officials to stop, and reverse, the growth of the City's Hispanic population. Those same officials have blamed Hispanics for the City's perceived economic decline and have used Hispanics as scapegoats to those who envy the wealthier Dallas suburbs or yearn for the racial and ethnic homogeneity of a bygone era.

Like its predecessor ordinances – which were the subjects of court injunctions prohibiting their effectuation and enforcement – Ordinance 2952 is a flawed, misguided, and unconstitutional attempt to drive an unwanted class of residents from the City's borders. Among other defects, the Ordinance is dependent on the timely participation of the monolithic "federal government" – an undefined and hopelessly-vague term which includes all three branches of the United States Government (including the hundreds of departments, divisions, agencies, bureaus, and commissions that comprise the bureaucracy of the Executive Branch). More importantly, the Ordinance relies on a federal immigration information-sharing program in which Farmers Branch is not an authorized participant and for which a municipal scheme of licensing the right to live in a dwelling is not an authorized purpose. In fact, contrary to Farmers Branch's intended use, the purpose of that program is not for determining whether an individual is "lawfully present" in the United States, but is for recording and tracking the individual's "immigration status" (*i.e.*, which one of hundreds of alpha-numeric status codes applies to that individual) to establish eligibility for certain federal or state benefits. Moreover, Ordinance 2952 turns the Supremacy Clause and the federal-state-municipal hierarchy on their head by imposing novel obligations on, and dictating standards of judicial review to, federal and state courts. Finally, Ordinance 2952 mandates terms and provisions that landlords must include in their lease

agreements, threatens landlords with criminal prosecution in the event they do not initiate civil eviction proceedings against certain of their tenants, and imposes other unreasonable burdens on interstate commerce.

Simply put, the Ordinance is a Byzantine attempt to accomplish indirectly what the City knows it could not begin to do directly. If not for the sobering fact that it was passed as part of a pernicious “revitalization” plan designed to rid Farmers Branch of lower-income Hispanics (and the businesses that serve that segment of the population), Ordinance 2952 would represent a surreal example of a municipality’s abuse of its police powers. Given its purpose, scope, and effect, however, Ordinance 2952 must be struck down by this Court as the latest unconstitutional attempt by the City of Farmers Branch to exclude a targeted class of men, women, and children from those permitted to reside within the City. Indeed, as the Court previously noted, Ordinance 2952 “is yet another attempt to circumvent the court’s prior rulings and further an agenda that runs afoul of the United States Constitution.”¹

II.

PARTIES

A. Plaintiffs

1. Villas is a Texas general partnership which owns and operates the Villas at Parkside, a 207-unit apartment complex built in 1999 and located at 4000 Park Side Center Blvd., in Farmers Branch, Texas.

¹ See Memorandum Opinion and Order, dated May 28, 2008, in *Villas at Parkside Partners d/b/a Villas at Parkside, et al. v. The City of Farmers Branch*, Civil Action No. 3:06-CV-2371-L (Lindsay, J.), at 7.

2. Lakeview is a Texas limited partnership which owns and operates Lakeview at Parkside, a 573-unit apartment complex built in 1996 and 1998 and located at 3950 and 3990 Spring Valley Rd., in Farmers Branch, Texas.

3. Chateau is a Texas general partnership which owns and operates the Chateau De Ville, a 161-unit apartment complex built in 2002 and located at 4040 Spring Valley Rd., in Farmers Branch, Texas.

4. Smith is a United States citizen and a Texas resident, having her principal place of residence in Farmers Branch, Texas. Smith leases and resides in an apartment in Farmers Branch and intends to continue to do so.

B. Defendant

5. The City is a municipal corporation located in Dallas County, Texas, and may be served by serving its Mayor, Tim O'Hare.

III.

JURISDICTION AND VENUE

6. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343 and 42 U.S.C. §§ 1981 and 1983. The Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

7. The Court has personal jurisdiction over Farmers Branch, and venue is proper in the Northern District of Texas pursuant to 28 U.S.C. § 1391(b), because the City is located in this District and Division.

IV.

FACTUAL BACKGROUND

A. Plaintiffs: Substantial Contributors To The Farmers Branch Economy

8. The apartment complexes owned by the Villas Plaintiffs are well-maintained and professionally-managed properties offering a host of amenities in each unit and a number of fitness, clubhouse, and other attractive facilities for the common use of their tenants. Monthly rents among the Villas Plaintiffs' three complexes range from \$750 for one-bedroom units to \$1,800 for two-bedroom units.

9. The Villas Plaintiffs rent their units not only to individuals and families, but also to corporations on either a short-term or long-term basis. Corporate renters, in turn, make their units available to employees, actual or prospective customers and clients, consultants, and other invitees. Villas Plaintiffs have substantial competition in the form of hotels and motels (including, but not limited to, "extended stay" facilities), and other apartment complexes and single-family properties located in other municipalities that are not subject to Ordinance 2952.

10. The Villas Plaintiffs' apartment complexes require and utilize the paid services of a number of rental agents, management personnel, maintenance workers, employees, and independent contractors, many of whom live in Farmers Branch. Moreover, the Villas Plaintiffs' tenants purchase a substantial portion of the goods and services they require from businesses located within Farmers Branch and many of those tenants are themselves employed by such businesses. In short, the Villas Plaintiffs and the apartment complexes they own and operate have a beneficial economic impact on the City, and the Villas Plaintiffs have conducted themselves as good citizens and significant contributors to the local community.

11. Plaintiff Smith held a seat on the City Council for Farmers Branch from 2003 until 2006. During that time, Smith served the community as a liaison for the Trinity River

Common Vision, the Metrocrest Hospital Authority, the Red Cross, and Community Watch. Smith also served as a member of the Farmers Branch Zoning Board of Adjustment for 15 years.

B. Farmers Branch: A City In Transition At The Outset Of The Twenty-First Century.

12. Farmers Branch was founded in 1841 and was formally incorporated as a city on February 2, 1856. It is a home rule municipality that operates in accordance with a “council-manager” form of government.

13. Since 1970, Farmers Branch has grown from a small, predominantly Anglo suburban community with a declining population into a growing city of almost 30,000 people. Today it is centrally located in the North Dallas Metroplex with approximately 80 corporations and more than 2,600 businesses making their home there.

14. According to the U.S. 2000 Census (the “Census”) figures, the racial composition of the City is 55.8% White, 37.2% Hispanic/Latino, and 7% other races. Approximately 25% of the City’s population is comprised of foreign-born individuals, of whom 82% are reported as having been born in Latin America. Without regard to lawful immigration status, the Census identifies over 5,500 persons in the City as being non-U.S. citizens. Since 2000, the ratio of Hispanics/Latinos to Anglos has continued to increase in Farmers Branch. Against that backdrop, the City set out to affect the ethnic composition of Farmers Branch.

C. Tim O’Hare Sets Out To Change The Ethnic Composition Of Farmers Branch.

15. Tim O’Hare (“O’Hare”) is the Mayor of Farmers Branch. As a member of the Farmers Branch City Council, O’Hare spearheaded the drafting and adoption of Ordinance 2952 and led the passage of the unconstitutional prior ordinances. The true purpose behind those municipal enactments was to rid the City of unwanted Hispanics, whose presence was (and is)

wrongly perceived by O'Hare and the City Council as an impediment to growth and development in Farmers Branch.

16. O'Hare has stated that the immigration issue is an integral component of an effort by the City to clean up neighborhoods, attract builders to buy older and smaller properties and build larger homes in their place, and lure new businesses to the City. Indeed, O'Hare has publicly stated that efforts to clean up the City were behind his drive to make it more difficult for immigrants to live in Farmers Branch – asserting that such persons do not maintain their residences and cause neighborhood property values to decline. Indeed, O'Hare has bemoaned the fact that “people move out of our neighborhoods and what I would call less desirable people move into the neighborhoods, people who don't value education, people who don't value taking care of their properties.” In a recently-released e-mail, O'Hare stated:

I don't want to have to live somewhere else. But, I'm not going to live in Oak Cliff, which is what we are becoming and going to become if we don't make some serious changes and spend some money.

With respect to attracting more “appropriate” people and businesses into Farmers Branch, O'Hare focused on driving out Hispanic businesses, especially those located in the “Four Corners” commercial area (*i.e.*, the retail shopping centers located at the intersection of Josey Lane and Valley View). In a recently-released e-mail, O'Hare proposed the following, under a heading entitled, “Illegal Immigration:”

We should aggressively ticket businesses/landlords in The Four Corners area that are not meeting code. If the run-down places aren't violating codes, we should draft some new ones.

17. That the real intent behind the City's so-called “illegal immigration” ordinances is the “cleansing” of ethnic neighborhoods is reflected in O'Hare's own words:

What you hear about on TV is the illegal-immigration issue. What you don't hear about is what's really behind this. You don't hear about our revitalization.

“Revitalization,” therefore, is the code word for ridding the City of its ever-increasing Hispanic population. O’Hare has publicly complained about important commercial areas within Farmers Branch “filling up with Spanish-speaking businesses and restaurants,” the local school district devoting “so much time and money into bilingual programs for those students,” and the alleged responsibility of immigrants for teenage girls becoming “pregnant all over the place.”

18. The link between the City’s “revitalization” policy (which, admittedly, is the reason the City adopted the so-called “illegal immigration” ordinances) and the desire to drive Hispanics out of the City is clearly reflected in a City-sanctioned task force report issued in late 2006.

D. “Economic Development”: The “Front” For Blatant Discrimination.

19. In or around March 2006, the City created the Branch Revitalization Task Force (the “Task Force”). The Task Force was comprised of, among others, O’Hare’s friends Ed Bonneau and Tim Scott. The Task Force was charged with investigating opportunities for retail and residential development and identifying barriers to development.

20. At a Task Force meeting on August 17, 2006, the Director of Community Services for the City (the “Director”) gave a presentation on the “Four Corners” retail area of Farmers Branch – an area where the majority of businesses serve the City’s Hispanic community. At that meeting, the Director explained that owners of the businesses in the Four Corners area do not have a “vision” for their properties and, therefore, the City should acquire, develop, and implement its own “vision” for those properties. Accordingly, the Task Force discussed acquiring the businesses in the Four Corners area by eminent domain but, once informed that the City could not proceed with condemnation, the Task Force discussed the City acquiring the properties through voluntary sales. Tim Scott observed, with obvious disdain, that

“property owners within the Four Corners are making money on their buildings and have no interest in wanting to change things.”

21. With the aid of the Task Force, the City cynically developed and implemented a plan to force the businesses in the Four Corners area to “voluntarily” leave. Specifically, the City would run off the customer base for those businesses – Hispanics.

22. The Task Force issued its Final Report and Recommendations on December 11, 2006. Listed in that report as one of the critical “barriers” to “redevelopment” was the fact that “the City’s Hispanic population increased from about 5 percent to 37 percent between 1970 and 2000 and continues to grow at a rate exceeding all other ethnic and racial populations in the City.” Further, the “declining appearance” of local shopping centers was attributed to “retailers responding to demographic change by increasingly marketing to growing ethnic populations, which in turn is giving rise to shopping centers devoted exclusively to ethnic populations, especially Hispanic, African American, and Asian populations.” The so-called “illegal immigration” ordinances were borne of an official “revitalization” policy aimed at ridding the City of undesirable Hispanic residents – and the retail businesses and apartment complexes which serve that segment of the community.

E. The O’Hare Proposal: An Inappropriate Response To Ethnic Diversity In Farmers Branch.

23. Unwilling to accept the new and increasingly diverse City, O’Hare announced a series of measures intended to cause Hispanics to feel unwelcome in Farmers Branch. In particular, in August 2006, O’Hare proposed that Farmers Branch crack down on “illegal immigration.” To accomplish such a crackdown, O’Hare proposed such measures as making English the “official language” of Farmers Branch and preventing illegal aliens from leasing in Farmers Branch.

24. Lacking any empirical data to support his assertions, O'Hare nonetheless declared that illegal aliens in Farmers Branch caused its public schools to have a bad reputation, resulted in a lack of "acceptable appreciation" in property values, and caused the City's allegedly-high crime rates.

25. The City's Mayor at the time, Bob Phelps, responded to O'Hare's rhetoric by publicly disputing O'Hare's conclusions: "[They are] not true . . . Our crime rate is down, our schools have moved up . . . property values are up." Indeed, Mayor Phelps euphemistically described O'Hare's proposals as "misguided."

26. Nonetheless, O'Hare and the City pressed forward with their "vision." The real intent, and certain effect, of those measures was to discourage members of the Hispanic population, whether citizens or immigrants (legal or illegal), from taking up residence in Farmers Branch.

F. The First Illegal Landlord Conscription Act.

27. On Monday, November 13, 2006, despite the dearth of factual support for its stated position, Farmers Branch adopted, as a so-called "emergency measure," Ordinance No. 2892 (the "Original Ordinance") entitled:

AN ORDINANCE AMENDING CHAPTER 26, BUSINESSES, ARTICLE IV APARTMENT COMPLEX RENTAL, MANDATING A CITIZENSHIP CERTIFICATION REQUIREMENT PURSUANT TO 24 C.F.R. 5 ET SEQ.; PROVIDING FOR ENFORCEMENT; PROVIDING A PENALTY; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

28. On that same day, the City adopted Resolution No. 2006-130 "Resolution Declaring English As The Official Language Of The City Of Farmers Branch" (the "English Only Resolution"). The City has also regulated yard maintenance and considered regulating the

colors residents may paint the exteriors of their homes. Those measures are all based on stereotypes of, and contempt for, Hispanics.

29. The Original Ordinance was adopted without deliberation, consideration, or debate by council members in any open meetings. The claimed “emergency” necessitating the Original Ordinance was that “the present ordinances and regulations of the City of Farmers Branch, Texas [were] inadequate to properly safeguard the health, safety, morals, peace and general welfare of the public.” No support, however, was offered into the record by Farmers Branch that would substantiate that undocumented immigrants jeopardize the health, safety, or welfare of the public, or that an emergency existed.

30. The Original Ordinance had at least five express references to Title 24 of the Code of Federal Regulations § 5, *et seq.* Indeed, the very title of the Original Ordinance declared that the “citizen certification requirement” established therein was “pursuant to 24 C.F.R. § 5 *et seq.*” However, those regulations do not purport to control, affect or govern rental agreements between private landlords and their tenants which are unrelated to any federal housing assistance program. Thus, contrary to the language of the Original Ordinance, it did not comport with federal housing law but, instead, imposed new and extraordinary citizenship and immigration restrictions on purely private residential lease agreements. Indeed, even with respect to government-supported housing programs, 24 C.F.R. § 5, *et seq.* does not absolutely prohibit all so-called “illegal immigrants” from receiving federal assistance.

31. Nevertheless, the Original Ordinance provided, as a condition to entering into any “apartment complex” lease or rental agreement, including any renewals or extensions thereof, that “the owner and/or property manager” shall require the submission of satisfactory “evidence

of citizenship or eligible immigration status for each tenant family,” and that such evidence is required of “[e]ach family member [an undefined term], regardless of age.”

32. Ordinance 2892 required owners and/or managers of apartment complexes located within Farmers Branch to “request and review original documents of eligible citizenship or immigration status,” to “retain photocopies of the documents for [their] own records and return the original documents to the family,” and to hold such records “for a period of not less than two (2) years after the end of the family’s lease or rental.” As evidence of U.S. citizenship, new and renewing tenants were required to provide “a signed declaration of U.S. citizenship or U.S. nationality,” to be “confirmed by requiring presentation of a United States passport or other appropriate documentation in a form designated by the Immigration and Customs Enforcement Department (‘ICE’) as acceptable evidence of citizenship status.” As evidence of “eligible immigration status,” new and renewing non-citizen (*i.e.*, alien) tenants were required to submit: (1) a “signed declaration of eligible immigration status,” (2) a “form designated by the Immigration and Customs Enforcement Department (‘ICE’) as acceptable evidence of immigration status;” and (3) a “signed verification consent form.”

33. In short, the Original Ordinance conscripted apartments owners and management companies as unwilling citizenship and immigration officers, for the apparent purpose of gathering information for the City’s unauthorized and unofficial “enforcement” of federal immigration laws.

34. To compound the inappropriate burden thrust upon apartment owners and management companies, the Original Ordinance provided that any failure by the owner and/or property manager to comply with its provisions resulted in a misdemeanor carrying fines of up to \$500 per day per violation, with each day being a separate violation.

G. The Second Illegal Landlord Conscription Act: Ordinance 2903 Failed To Cure The Original Ordinance's Defects.

1. The Original Ordinance is enjoined.

35. The Original Ordinance was adopted without public deliberation, consideration, or debate in violation of the Texas Open Meetings Act ("TOMA"). Accordingly, a lawsuit styled *Guillermo Ramos v. City of Farmers Branch et. al.* was filed in the 116th Judicial District Court of Dallas County, Texas (the "State Court") on December 4, 2006, seeking to enjoin effectuation and enforcement of the Original Ordinance.

36. On January 11, 2007, the State Court issued a temporary restraining order enjoining the enforcement of the Original Ordinance finding, among other elements, a likelihood of ultimate success on the merits of the claim that the Original Ordinance was enacted in violation of TOMA.

2. The City responded to the State Court injunction with the Second Ordinance.

37. In recognition of the merit of TOMA challenge, the City undertook to replace the Original Ordinance. Consequently, at a City Council meeting on January 22, 2007, the City adopted Ordinance No. 2903 (the "Second Ordinance"), which purported to repeal the Original Ordinance.

38. Ordinance 2903 slightly modified the Original Ordinance in three respects. First, the Second Ordinance added an exemption for minors and seniors over 62 years old. Second, it undertook to change the documentation requirements of the Original Ordinance to implement the so-called "mixed family" rule. Finally, the Second Ordinance added a right to a hearing before a "City Building Official" for any would-be tenant who is denied a lease because of a question regarding his or her immigrant status verification.

39. These superficial changes to the Original Ordinance did not address, let alone cure, the multiple fundamental legal defects of the Original Ordinance. In fact, the Second Ordinance was essentially the same ordinance, re-enacted in an effort to overcome the defects resulting from the City Council's violations of TOMA in enacting the Original Ordinance.

40. The Second Ordinance was equally defective and in violation of the law. For example, the Second Ordinance still imposed extraordinary citizenship and immigration restrictions on purely private residential lease agreements. It continued to rely on Title 24 of the Code of Federal Regulations § 5, *et seq.* and still required citizenship and immigration status verification, with original documentation, as a mandatory prerequisite to entering into any "apartment complex" lease or rental agreement. Furthermore, the Second Ordinance continued to impose criminal penalties for any failure by a property owner or manager.

3. **The Court enjoins the Second Ordinance, but the City's scheme is having the desired effect.**

41. On May 28, 2008, this Court entered an order permanently enjoining the City from effectuating or enforcing the Second Ordinance based on violations of the Supremacy and Due Process Clauses of the United States Constitution.

42. Notwithstanding the injunctions against their effectuation and enforcement, Ordinance 2892 and Ordinance 2903, in combination with the English-Only Resolution and other City efforts, have had the City's desired discriminatory effect—many Hispanic renters have fled.

43. Indeed, the City has been so successful in expelling Hispanics that on June 3, 2008, the City agreed to pay a developer to acquire properties in the Four Corners retail area – which has many businesses that serve the Hispanic community – so that they may be bulldozed in furtherance of the City's "vision." Those are the same businesses whose owners Tim Scott

previously stated would not sell to the City because their businesses were so profitable. Having run off substantial numbers of those businesses' patrons (Hispanics), O'Hare was able to declare that there would be "no forced sales, [and] no strong-arming people" through eminent domain.

H. The Third Illegal Conscription Act: Ordinance 2952.

1. The Orwellian Nightmare: Farmers Branch passes Ordinance 2952 requiring registration and issuance of residency papers.

44. Undeterred and determined to remove Hispanics from its borders, on Tuesday, January 22, 2008, Farmers Branch formally adopted Ordinance No. 2952 titled:

AN ORDINANCE PROVIDING FOR RESIDENTIAL OCCUPANCY LICENSES; PROVIDING FOR VERIFICATION OF ALIENS' IMMIGRATION STATUS WITH THE FEDERAL GOVERNMENT CONSISTENT WITH FEDERAL LAW; CREATING OFFENSES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR JUDICIAL REVIEW; PROVIDING A PENALTY; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.²

45. Ordinance 2952 (the "New Ordinance") was adopted without deliberation, consideration, or debate by council members in any open meetings.

46. The New Ordinance requires persons eighteen years of age or older to report to the City their intent to occupy a leased single family home³ or apartment in Farmers Branch. Prospective renters must complete an occupancy license application, pay a \$5 fee to the City, and obtain a residential "occupancy license" before they may occupy a single-family residence or apartment in Farmers Branch.

² A true and correct copy of Ordinance 2952 is attached hereto as Exhibit 1.

³ A single family home in Farmers Branch means family homes, duplexes, and condominiums. See City of Farmers Branch, Texas Code of Ordinances ("City Code"), Section 26-71 (definitions).

47. Additionally, occupants must obtain a new license each time they intend to move to a different apartment complex or rental house within the City. If multiple occupants live within one home or apartment, each occupant must sign a separate residential occupancy application and obtain a separate occupancy license. Thus, the New Ordinance forbids spouses, family members, caregivers, and others at least eighteen years of age from living together unless each obtains a separate residential occupancy license.

48. Failure to comply with those requirements constitutes an offense punishable by a fine of up to \$500 per day.

2. The New Ordinance treats aliens differently from American citizens and nationals.

49. The New Ordinance requires prospective occupants to attest to their citizenship. If the applicant attests to being a United States citizen or national, the applicant will be issued an occupancy license, and the City will not check his or her citizenship or immigration status.

50. For other applicants, however, the building inspector is required to “verify with the federal government whether the occupant is an alien lawfully present in the United States.”

51. If the federal government erroneously reports the status of the occupant as an alien not lawfully present, the New Ordinance only provides the occupant with 60 days in which to: (1) provide the federal government “additional information” sufficient to prove that the occupant is lawfully present in the United States; and (2) cause the federal government to correct his or her records and to notify the City of the correction.

52. The New Ordinance, however, does not specify what “additional information” occupants must provide the federal government to obtain corrections and thereby avoid either losing their housing license or exposing themselves to criminal sanctions. Moreover, the New

Ordinance fails to indicate to whom such additional information should be sent. Instead, the New Ordinance merely states the information shall be provided to the “federal government.”

53. If the “federal government” does not, within 60 days, correct its records and report back to the City building inspector, the building inspector is required to send “a revocation notice” to the landlord and occupant informing each that the occupancy license will be revoked “effective 15 days after the date of the revocation notice.”

3. Landlords are conscripted to act as the City’s expulsion officers.

54. Like its predecessors, the New Ordinance unlawfully shifts the burden of the City’s alleged effort to control illegal immigration onto private landlords.

55. Indeed, under threat of criminal sanctions, the City has thrust upon landlords the burden of notifying renters of the City’s license scheme. In particular, landlords are subject to fines of up to \$500 per day, per violation, for failing to disclose to prospective occupants’ their obligations under Ordinance 2952, including: (1) the duty to comply with the New Ordinance; (2) the obligation to pay a fee of \$5 to the City; (3) the need for each occupant to obtain an occupancy license; and (4) the requirement that each applicant 18 years of age or older sign his or her own application form and attest, under penalty of law, to his or her country of citizenship.

56. The New Ordinance also imposes on landlords the obligation to commence and “diligently pursue” (to the City’s satisfaction) eviction proceedings for tenants whose occupancy licenses the City has revoked. In other words, the New Ordinance will force landlords to act as City prosecutors.

57. To ensure a landlord’s compliance, the New Ordinance imposes harsh penalties on landlords, their agents, and their managers. For example, it is an offense: (1) to lease or rent without obtaining and retaining a copy of the residential occupancy license of any and all known occupants; and (2) to knowingly permit an occupant to occupy a single family residence or an

apartment without a valid residential occupancy license. Each day in which a violation occurs is a separate offense, with each offense carrying a penalty of up to \$500.

58. In addition, the New Ordinance requires the building inspector to suspend the landlord's license if the landlord "commits an offense." During the term of the suspension, a landlord is prohibited from collecting any rents at the apartment complex. Although the New Ordinance provides that it is a defense to prosecution that the landlord or its agent commenced and "diligently pursued" – whatever that means – such steps as may be required to terminate the lease or tenancy, that defense does not apply to suspension of a landlord's license. Indeed, under the New Ordinance, no hearing or notice is required before the City building inspector suspends a landlord's license. The New Ordinance thus confers upon the City building inspector unbridled discretion to effectively destroy a landlord's business without notice or a hearing.

I. The Regulation Of Citizenship And Immigration Matters: The Exclusive Province Of The Federal Government.

59. Pursuant to Article I, Section 8, Clauses 3 and 4 of the United States Constitution, the federal government has the power to "establish a uniform Rule of Naturalization" and to "regulate Commerce with foreign Nations." In fact, the Supreme Court of the United States has held that the federal government's power to control immigration is inherent in the nation's sovereignty.

60. Pursuant to its exclusive power over matters of immigration, the federal government has established a comprehensive system of administrative agencies, statutes, regulations, and procedures to determine, subject to judicial review, whether and under what conditions aliens may enter, live, and work in the United States – and, if desired, become citizens thereof.

61. The federal government has chosen to allow certain aliens to remain in the United States even though such persons may not have valid immigrant (permanent) or non-immigrant (temporary) status or may otherwise be removable or subject to deportation. For instance, under federal law, various categories of persons can receive federal permission to work, and implicitly to stay and reside, in the United States even though they may be violating immigration laws. Moreover, persons with pending applications to adjust to a lawful status are often permitted to remain in the United States despite being in the country unlawfully. Of course, determinations of who may continue living here are within the exclusive province of the United States government and any attempt by state or local officials to usurp that function constitutes an inappropriate interference with an exclusive federal function. Indeed, with limited exceptions, only an immigration judge may determine whether an alien may be admitted or removed from the United States.

62. The New Ordinance directs the building inspector to, pursuant to Title 8, United States Code section 1373(c), verify with the federal government whether an occupant is an alien “lawfully present” in the United States.⁴

63. Under 8 U.S.C. § 1373, the now abolished Immigration and Naturalization Service was authorized to provide citizenship or immigration information to federal, state, and local government agencies only for a “purpose authorized by law.” Federal law authorizes local governments to require proof of eligibility only for “State and local public benefits” as defined by federal law (8 U.S.C. § 1625). The phrase “State or local public benefits” is defined by 8 U.S.C. § 1621(c) as:

⁴ Ordinance 2952 §§ 1, 3 (adding City Code Sections 26-79 (D)(1) and 26-119 (D)(1)).

(A) any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government; and (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.

64. Here, the City is attempting to license the right to obtain rental housing. Of course, shelter is neither a benefit nor a privilege; rather, it is a basic human necessity and a right. As such, the City's proposed occupancy licenses do not constitute a state or local public benefit under 8 U.S.C. § 1621(c). Farmers Branch, therefore, is not authorized to use federal resources to verify immigration status in relation to its residential "occupancy licenses." Moreover, the City's attempt to require an applicant to submit immigration information and establish eligibility for housing in Farmers Branch is forbidden and preempted by 8 U.S.C. § 1625.

65. Nonetheless, Farmers Branch inappropriately intends to use the Systematic Alien Verification for Entitlements Program (the "SAVE Program") to determine whether occupancy license applicants are eligible to rent housing in the City. The SAVE Program is an existing federal eligibility system used to verify status for various federal-state cooperative programs such as Housing Assistance, Medicaid, and Unemployment Compensation programs, under which eligibility is limited by Congress based on immigration status.

66. The SAVE Program: (1) expressly provides that it does not determine under what criteria a person is or is not entitled to a benefit or license; and (2) is not, according to the Department of Homeland Security, a complete collection of immigration information on all aliens. Thus, the City may not use the SAVE Program to conclusively determine whether an alien is lawfully present in the United States.

67. Additionally, because the New Ordinance would deny an occupancy license to those “not lawfully present,” it conflicts with federal policy. The phrase “not lawfully present” is not conterminous with “removable.” For instance, spouses of United States citizens can simultaneously be unlawfully present and non-removable. Thus, the New Ordinance not only violates the sanctity of marriage, but also expels spouses of citizens whom the federal government allows to stay in the United States.

J. The New Ordinance Violates Due Process.

68. The Fourteenth Amendment guarantees due process of law, and proscribes laws that are so vague that persons of common intelligence must necessarily guess at their meaning. An ordinance is unconstitutionally vague where it fails to provide those targeted by the ordinance a reasonable opportunity to know specifically what conduct is prohibited, or is so indefinite as to allow arbitrary and discriminatory enforcement. A law is void for vagueness under the due process clause if it lacks standards or if its enforcement depends upon arbitrary discretion vested in those ultimately responsible for achieving its objectives. Further, due process requires the government to provide notice and a hearing before depriving any person of life, liberty, or property.

69. The New Ordinance imposes criminal penalties for violations which the City fails to define with sufficient clarity for ordinary people to understand how to comply. As such, the New Ordinance invites arbitrary and discriminatory enforcement practices and violates constitutional requirement of due process. Further, the New Ordinance provides neither notice nor a hearing prior to the suspension of the landlord’s license to rent, and provides insufficient notice and review before occupancy licenses can be revoked. Indeed, the New Ordinance fails to provide for a hearing prior to or even after revocation of an occupancy license. Instead, the New Ordinance would require tenants and landlords to bear the cost of initiating litigation. Further,

under the New Ordinance, tenants and landlords would bear the burden of establishing innocence, rather than the City being required to prove guilt. Accordingly, the New Ordinance lacks the safeguard of due process and is unconstitutional.

1. **The New Ordinance is unconstitutionally vague and compliance is impossible.**

70. In order to obtain an occupancy license, the New Ordinance, among other things, requires applicants to provide: (1) the address of the residence or apartment to be rented; and (2) the date of the lease or rental commencement. The New Ordinance, however, also provides that: “[i]t shall be an offense for a lessor to lease or rent without obtaining and retaining a copy of the residential occupancy license of any and all known occupants”; and “[i]t shall be an offense for a person to knowingly make a false statement of fact on an application for a residential occupancy license.” In other words, under the New Ordinance a lessor cannot lease to a tenant without the tenant providing an occupancy license, but a tenant cannot accurately complete the occupancy license application without having signed a lease.

71. Additionally, under the New Ordinance, it is: (1) “an offense for a lessor to lease or rent a single family residence [or apartment] without obtaining and retaining a copy of the residential occupancy license of any and all known occupants;” and (2) an offense for a landlord to “knowingly permit an occupant to occupy a single family residence [or apartment] without a valid residential license.” The New Ordinance defines “occupant” as “a person, age 18 or older, who resides at an apartment [or a single family residence].” A “temporary guest of an occupant” is excluded from the definition of “occupant.” The New Ordinance, however, does not define “temporary guest.” Therefore, a lessor cannot know whether an occupant is merely a “temporary guest” or an “occupant” under the New Ordinance and, thus, cannot know who should be

licensed and who should be evicted. Accordingly, the New Ordinance fails to provide landlords with an opportunity to know what conduct is prohibited.

72. Under the New Ordinance, landlords, lessors, or “person responsible for the management of an apartment complex” and “any agent of a landlord with authority to initiate proceedings to terminate a lease or tenancy” are all subjected to potential criminal prosecution. Importantly, the New Ordinance does not define the catchall phrase “person responsible for the management of an apartment complex” or the ubiquitous term “agent.”

73. Under the New Ordinance, it is an offense for a landlord to knowingly permit an occupant to occupy a residence or apartment without a valid residential occupancy license. As a “defense to prosecution” a landlord may establish that it “commenced and diligently pursued such steps as may be required under the applicable law and lease provisions to terminate the lease or tenancy.” That provision, however, is unconstitutionally vague. Specifically, the New Ordinance does not define “diligently pursued.” Further, the New Ordinance denies due process by improperly shifting the burden of proof to the landlord. The City should be required to show that a defendant failed to meet a defined standard. A landlord should not be required to prove its innocence by showing that it complied with an ambiguous duty.

74. Finally, it is not clear whether the New Ordinance applies to extensions or renewals of current leases or whether it applies to holdover tenants. In particular, the New Ordinance provides that it “applies only to leases or tenancies that commence on or after its effective date.”

2. The New Ordinance provides insufficient notice.

75. Incredibly, although criminal penalties may be imposed and the occupancy license and business license must be revoked 15 days after the notice of revocation is sent to the landlord and occupant, the New Ordinance does not limit the building inspector’s discretion in

selecting how to send such notices. Accordingly, the building inspector may choose to send the notice via regular mail (which often takes a number of days before actual delivery) or any other method of his choosing.

76. The fifteen-day period begins when the notice is sent, not when it is received. The effective date of the revocation does not account for mailing after hours, on weekends, on holidays, or to distant locations. Moreover, the New Ordinance does not provide that non-receipt or untimely receipt of the notice of revocation is a defense to either prosecution or the loss of a landlord's license and all rents. Indeed, under the New Ordinance the building inspector is not required to provide lessor's "agents" or "managers" with notice of the revocation. Accordingly, the New Ordinance subjects landlords and others to criminal penalties, suspension of their licenses, and loss of all rents even when they receive no notice, or insufficient notice, of the revocation.

77. This result is especially problematic given that the New Ordinance does not specify the address to which notice is to be provided. Instead, the New Ordinance merely states that notice is to be sent to the lessor. The New Ordinance does not specify how the building inspector is to determine the address of the lessor. For tenants, the New Ordinance provides that notice is to be sent to the address provided on the application. The New Ordinance, however, allows tenants of apartments to move within the same complex without obtaining a new license or submitting updated contact information. Therefore, under the New Ordinance, landlords, agents, managers, and tenant, may be convicted of a crime without having received notice of the event (revocation of occupancy license) giving rise to the duty allegedly breached.

78. The lack of notice is compounded by the absence of any pre-revocation hearing. The only way that an occupant or landlord can avoid the deprivation of their rights is to institute legal action.

3. The New Ordinance provides for sham judicial review, not “due process.”

79. Under the New Ordinance an occupant or landlord “who has received a deficiency notice or a notice of revocation may seek judicial review of the notice by filing suit against the building inspector in a court of competent jurisdiction in Dallas County, Texas.” This “process” is inadequate for at least two reasons.

80. First, only a federal immigration judge can make a conclusive determination regarding an alien’s right to stay or be in the United States. The only way to obtain a meaningful review of an alien’s lawful status would be through an appeal to an immigration judge. Obviously, Farmers Branch may neither burden nor confer jurisdiction upon the Immigration Court to hear appeals of municipal license revocations. Accordingly, the New Ordinance provides for inadequate judicial review.

81. Second, the “review” provided for by the New Ordinance is a sham. In particular, the New Ordinance: (1) rewrites the Rules of Evidence; (2) improperly turns City officials and landlords into immigration prosecutors; and (3) impermissibly requires landlords and tenants to establish their innocence. In particular, Ordinance 2952 requires courts to “take judicial notice” of “any verification of the citizenship or immigration status” provided by the federal government. Moreover, the New Ordinance even dictates that courts request from the “federal government” a new immigration verification. Obviously, the City may neither mandate that state or federal courts admit certain “evidence” nor require courts to make requests of federal officials. Further, in any proceeding regarding the revocation of a license, City officials would be required to defend the accuracy of the federal determination. City officials are neither authorized nor

qualified to act as immigration prosecutors. Finally, the New Ordinance creates a “rebuttable presumption” based on the printout from the SAVE Program which the New Ordinance requires the Court to admit into evidence. Accordingly, an occupant or landlord has to disprove hearsay and otherwise unreliable evidence from a nonparty in order to avoid the deprivation of established rights.

4. **Catch 22: landlords face liability no matter what they do.**

82. Under the New Ordinance it is an offense for a landlord to knowingly permit an occupant to occupy a residence or apartment without a valid residential occupancy license. A landlord has a “defense to prosecution” if the landlord can show that it “commenced and diligently pursued such steps as may be required under the applicable law and lease provisions to terminate the lease or tenancy.” As discussed above, that provision is unconstitutionally vague and improperly shifts the order of proof onto the defendant.

83. The provision is also problematic because an eviction proceeding cannot be initiated until: (1) the default occurs (the effective date of the revocation); and (2) the landlord provides the tenant in default with notice to vacate the premises, at least three days before filing a suit to evict.

84. In addition to forcing landlords to prosecute their tenants and institute suits against the City merely to avoid automatic suspension of their license (in fact, a landlord may prevent loss of its license only by filing a complaint for judicial review within fifteen days of the City sending the notice of revocation, and delaying the proceedings long enough to allow the lease to expire on its own terms), the New Ordinance also subjects landlords to civil rights suits. Specifically, landlords will be forced to effectuate the City’s discriminatory policy. Every evicted tenant could, therefore, potentially bring a civil rights suit against the landlord.

Unfortunately, the New Ordinance turns landlords into unwilling adversaries of both their tenants and the City and provides no means for satisfying the demands of either.

K. The New Ordinance Discriminates Against Hispanics And Aliens.

85. Under the New Ordinance, a landlord is subject to potential criminal prosecution, a loss of all rent, and the cost of instituting and prosecuting evictions if it rents to an alien or someone who might choose to live with an alien. Moreover, the New Ordinance increases the risk that tenants will not stay in their residence for the duration of a lease. Rents will increase in accordance with the increased risk thrust on landlords.

86. By creating a substantial financial and legal incentive to avoid renting to prospective Hispanic and alien tenants, the New Ordinance encourages private discrimination against Hispanics. Indeed, given the City's "vision," the New Ordinance seems designed to have that effect.

L. The New Ordinance Impermissibly Burdens Fundamental Rights.

87. The New Ordinance impermissibly infringes upon the fundamental rights of privacy, travel, and shelter. The government of a free people does not condition the right to shelter or the right to move to a location of choice on registering with the local authority, paying a fee, and obtaining a license. Prospective occupants' rights, privileges, and liberty interests are burdened impermissibly by the New Ordinance. Specifically, the New Ordinance forces individuals to incur expense, forces the disclosure of information to the City, and forces individuals to institute litigation merely to protect those freedoms. A free society does not require residents to kowtow to government officials in order to obtain a license to merely live in the community.

88. The Ordinance is offensive and illustrative of the City's discriminatory intent in that it requires renters to obtain papers, but does not so burden those seeking to buy a home in

the City. Indeed, having determined that those the City classifies as “undesirables” reside predominantly in rental units, the City intends to sweep in, acquire the properties, sell them to insiders, and rid the City of its unwanted residents.

89. Those living in, or desiring to move to, Farmers Branch have a right to privacy, freedom of speech, and freedom of association, and may not be required to disclose to the City those who reside with them.

90. People in Farmers Branch, regardless of their citizenship or immigration status, have a fundamental right to seek shelter – whether a home or an apartment. People willing and able to house themselves and their families should not be denied housing because their local government considers them a “barrier to development.”

91. The New Ordinance places an impermissible burden on tenants’ and landlords’ fundamental rights and liberty interests. Indeed, under the New Ordinance, without adequate due process protections: (1) an occupant’s license may be revoked; (2) an occupant may be deprived of property and contractual interests; (3) a landlord’s license may be suspended; (4) a landlord may be deprived of property and contractual interests; and (5) individuals may be found guilty of crimes and fined. Moreover, under the New Ordinance, the City will unlawfully deprive landlords and tenants of their rights and liberty interests unless landlords and tenants institute suit and establish their innocence.

M. The Consequence Of The City’s Unlawful Scheme: Plaintiffs Have Suffered And Will Continue to Suffer Injury In The Absence Of The Court’s Intervention And Issuance Of Appropriate Relief.

92. Since enactment of the Original Ordinance, the Villas Plaintiffs have suffered damages including a loss of leases with new tenants and renewals of leases with existing tenants. This is a direct consequence of the burdensome and illegal requirements of the Original Ordinance, the Second Ordinance, and now the New Ordinance. By adopting those ordinances,

the City intended to send a strong message that certain people are not welcome in Farmers Branch. That message has had its intended effect and has harmed Plaintiffs.

93. Indeed, the Apartment Association of Greater Dallas reports that apartment occupancy in Farmers Branch during the quarter following enactment of the Original Ordinance fell by 10%. Moreover, the Apartment Association attributes the fall in occupancy to the City's enactment of the Original Ordinance and the Second Ordinance, and projects that its members, including the Villas Plaintiffs, will suffer millions of dollars in lost revenues as a result of the City's conduct.

94. The Villas Plaintiffs' business of leasing multi-family housing is extremely competitive. The Villas Plaintiffs compete with a number of comparable apartment complexes in nearby municipalities (such as Addison, Carrollton, and Dallas) that are not subject to the onerous requirements of the New Ordinance. Consequently, as reflected in the Apartment Association's reports, the Villas Plaintiffs have lost and will continue to lose tenants to other jurisdictions.

95. Like its predecessors, the New Ordinance imposes a substantial burden on most, if not all, of the Villas Plaintiffs' existing and prospective tenant base. In particular, there are two specific sub-populations of that tenant base that are most affected by the New Ordinance. They are: (a) "transitional tenants" who are transitioning between homes; and (b) tenants from outside Texas who enter into lease agreements through Internet-based transactions.

96. One of the largest sources of the Villas Plaintiffs' tenant base are tenants who are in transition between homes. Many of the Villas Plaintiffs' leases are with persons who are moving to the area or are in the process of purchasing a home. For example, nearly one-fourth of Lakeview's tenants are from out of state.

97. The Villas Plaintiffs face substantial competition for transitional tenants in the form of hotels and motels (including, but not limited to, “extended stay” facilities), and apartment complexes located in other municipalities. The Villas Plaintiffs have strategically, and successfully, positioned themselves to capitalize on this key market segment by offering short-term leases specifically designed for transitioning tenants’ convenience. The Villas Plaintiffs’ experience has taught them that prospective transitional tenants want to reserve an apartment as soon as possible, both to reserve the availability of the physical unit and to “lock in” the price. Therefore, the Villas Plaintiffs have streamlined their administrative and application processes to be more efficient (and, thus, more competitive) in closing lease contracts with the least possible inconvenience to their tenants. The New Ordinance, like the Original and Second Ordinance before it, will destroy that competitive advantage.

98. In addition, a large percentage of the Villas Plaintiffs’ tenants originate through the Internet. For those prospective tenants, often no face-to-face meeting is conducted until the tenant actually takes occupancy. Applications, fees, and necessary documentation are exchanged via telefax or express mail. The New Ordinance forecloses these business operations.

99. Additionally, the Villas Plaintiffs’ tenant base is comprised in part of corporations who lease units on either a short-term or long-term basis. Therefore, under the New Ordinance, if a corporation is an “occupant,” it cannot complete the application for a license because it is not a citizen or an alien. If a corporation is not an occupant, a lessor cannot lease to it because it must first obtain a copy of the occupancy license of a known occupant.

100. Unless this Court declares the New Ordinance to be invalid and enjoins the enforcement thereof, the Villas Plaintiffs will suffer irreparable injury in addition to the damages they have already suffered as a result of the Original and Second Ordinance. The New

Ordinance will likely result in a substantial loss of the Villas Plaintiffs' business because prospective tenants dislike unnecessary burdens and inconveniences such as the application process under the New Ordinance. Many tenants will prefer the comparative ease of obtaining suitable competing accommodations in neighboring municipalities. Further, the Villas Plaintiffs will be subject to criminal and civil penalties as a result of the enforcement of the New Ordinance.

101. The City's adoption and threatened enforcement of the New Ordinance has violated, and will continue to do injury to, Plaintiffs' constitutional, statutory, and common law rights. Therefore, judicial intervention and appropriate declaratory and injunctive relief is necessary to prevent further deprivations and violations of Plaintiffs' rights and property interests. Additionally, Plaintiffs are entitled to recover damages to compensate them for the injuries they have sustained as a result of the City's enactments of the unlawful Original Ordinance, Second Ordinance, and the New Ordinance.

102. As a result of the City's conduct, Plaintiffs have been required to obtain the undersigned counsel to prosecute and present the claims asserted herein.

V.

CLAIMS

A. Count One: Violation Of The Supremacy Clause.

103. Plaintiffs hereby incorporate the allegations in the preceding paragraphs as if fully set forth herein.

104. Article VI of the United States Constitution provides: "This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the

Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution of Laws of any State to the Contrary notwithstanding.”

105. The power to regulate immigration is exclusively given to the federal government by the Constitution. Any regulation of immigration by a state or local government intrudes on that federal authority and is pre-empted by the Supremacy Clause. Further, the Supremacy Clause mandates that federal law preempts state and local government laws in areas where Congress has expressly or impliedly exercised exclusive authority and when those laws conflict with federal law.

106. The New Ordinance is a regulation of immigration in a field where Congress has exercised exclusive authority. Moreover, the New Ordinance conflicts with federal law. Accordingly, the New Ordinance is pre-empted by the Supremacy Clause of the Constitution of the United States.

1. The New Ordinance is an improper attempt to regulate immigration.

107. The New Ordinance is an improper attempt to regulate immigration because it intrudes on the federal government’s exclusive power to regulate immigration. A regulation of immigration is a determination of whether an alien should or should not be admitted in the United States and the conditions under which the alien can remain. The New Ordinance limits individuals’ rights to live in Farmers Branch based on immigration status, and does so in a manner different than that set out by Congress.

108. Specifically, through the New Ordinance the City seeks to register and identify aliens living in Farmers Branch, assess whether they are lawfully present in the United States, and force landlords to expel immigrants, making it impossible for them to live within City limits. Deciding who may stay and who must depart, and expelling the latter, is the very core of immigration regulation.

109. The New Ordinance requires that a landlord, at the cost of losing the landlord's business license and the ability to collect rent from any tenants in the apartment building, to evict any person the building inspector determines is not entitled to live in Farmers Branch. Such requirements seek not only to punish and deter landlords from renting to aliens, but also to deny "abode" to aliens.

110. Farmers Branch has, independent of the federal government, designed its own system of regulation that seeks to regulate the presence of foreign nationals within the City's borders. Further, the New Ordinance would deny housing to aliens even when the federal government would not remove them. Accordingly, the New Ordinance is a regulation of immigration that is pre-empted under the Supremacy Clause of the Constitution of the United States.

2. **The New Ordinance intrudes into areas where Congress has occupied the field of regulation.**

111. The New Ordinance also purports to regulate in fields where Congress has enacted an exclusive, comprehensive regulatory regime. This system includes the Immigration and Nationality Act and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

112. Through those statutes the federal government has adopted a comprehensive system for determining the eligibility of aliens for state and local benefits and licenses. This comprehensive system has occupied the field. Moreover, federal law provides that local governments cannot lawfully deny benefits or licenses to aliens other than those prescribed by Congress.

113. A "residential occupancy license" is not, as defined by Congress, a state or local benefit that aliens may be denied. Accordingly, the New Ordinance, which purports to deny

residential occupancy licenses to aliens not lawfully present, is pre-empted by federal regulation of the field and must be enjoined.

114. Further, the New Ordinance purports to be an anti-harboring ordinance. The federal anti-harboring statute, Title 8, United States Code Section 1324(a)(1)(A)(ii), prohibits knowingly harboring aliens who remain in the United States in violation of law. In contrast, the New Ordinance prohibits knowingly renting to unlicensed aliens, whose presence may or may not violate federal immigration law. Accordingly, the New Ordinance creates requirements on landlords that exceed those of the federal anti-harboring statute. Moreover, the penalties under the New Ordinance vary substantially from those prescribed by Congress. The New Ordinance is therefore pre-empted because it attempts to regulate in a field regulated by the federal government.

3. The New Ordinance conflicts with federal law and federal policies.

115. The New Ordinance also violates the Supremacy Clause because it conflicts and interferes with clear federal policies. For instance, the United States Department of Housing and Urban Development (“HUD”) provides housing subsidies for low income individuals and families. Pursuant to a settlement of prior litigation, Farmers Branch participates in a number of HUD programs. The HUD programs provide housing benefits to “mixed families”—families where some members are ineligible aliens. By denying housing to mixed families, the New Ordinance conflicts with the federal government’s housing policy.

116. Further, by requiring the use of federal government resources to verify the immigration status of residents of Farmers Branch, the New Ordinance places a burden on the resources of the federal immigration system without federal authorization. As such, the New Ordinance conflicts with the administrative apparatus designed to enforce the immigration laws.

117. Enforcing the New Ordinance will also require Farmers Branch and others to intrude into the enforcement of immigration laws. Specifically, the judicial review provisions will require non-immigration courts to make determinations regarding the immigration status of individuals. Additionally, the Farmers Branch building inspector will be required to play the role of immigration prosecutor. Likewise, because appeals of the suspension of a landlord's license are heard by the Farmers Branch City Council, the city council will be required to make determinations regarding the immigration status of renters. Further, landlords are required to expel aliens that the City has deemed unfit to live in the City. Only an immigration judge or other appropriate federal officials can perform those functions. Accordingly, the New Ordinance conflicts with federal law and policy.

4. **Because the New Ordinance is pre-empted, it must be enjoined.**

118. By implementing a residential licensing scheme based on immigration status, the New Ordinance runs roughshod over the complex system of federal classification and discretion. Ultimately, the effect of the New Ordinance is to upset the system established by Congress in order to implement Farmers Branch's own enforcement mechanisms, penalties, and interpretations in place of the federal system.

119. In addition, as a result of the New Ordinance's violation of the Supremacy Clause, the Villas Plaintiffs are subject to criminal penalties, may lose their licenses to do business, and will lose current and prospective tenants who may otherwise be permitted by the federal government to live in the United States, but will nevertheless be barred from renting apartments in Farmers Branch. In addition, the chilling effects of the New Ordinance will generally discourage many prospective tenants of Hispanic descent from even submitting rental applications with the Villas Plaintiffs. Further, Plaintiff Smith will be required to divulge personal information, pay a fee, and otherwise participate in a licensing scheme that serves no

purpose but to discriminate against aliens and Hispanics in contravention of the federal government's immigration system and the protections of the Constitution.

120. Accordingly, this Court should declare the New Ordinance unconstitutional and preliminarily and permanently enjoin its effectuation and enforcement.

B. Count Two: Violation Of 42 U.S.C. § 1983

121. Plaintiffs hereby incorporate the allegations in the preceding paragraphs as if fully set forth herein.

122. The New Ordinance deprives landlords and individuals within Farmers Branch of rights, privileges, and immunities secured by the United States Constitution and federal laws.

123. Farmers Branch was acting under color of law when it passed the New Ordinance, and all agents of Farmers Branch attempting to effectuate or enforce the New Ordinance are, and will be, acting under color of law.

124. The New Ordinance has deprived Plaintiffs, and subjects Plaintiffs to the future deprivation, of rights secured by the Constitution and federal law. Accordingly, Plaintiffs are entitled to recover damages they have suffered as a result of the enactment of the New Ordinance. Further, Plaintiffs are entitled to a declaration that the New Ordinance is unconstitutional and injunctive relief prohibiting the effectuation and enforcement of the New Ordinance and remedying the discriminatory effects resulting from the enactment of the New Ordinance.

1. The New Ordinance violates the Privileges and Immunities Clause of the Fourteenth Amendment

125. The Fourteenth Amendment of the Constitution of the United States provides that: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

126. The citizens of the United States have the prerogative to live wherever they can obtain housing without interfering with the rights of others. The Privileges and Immunities Clause prohibits state and local governments from placing conditions on the ability of a citizen of the United States to establish a residence in that state or locality.

127. The New Ordinance abridges the privileges and immunities of the citizens of the United States because it prohibits citizens from obtaining otherwise available housing without having obtained a license from the City. The City has no legitimate public purpose for abridging those privileges or immunities. Accordingly, the Court should enjoin enforcement and effectuation of the New Ordinance.

2. **The New Ordinance violates the Due Process Clause of the Fourteenth Amendment.**

128. The Fourteenth Amendment of the Constitution of the United States provides that: “No state . . . shall deprive any person of life, liberty or property without due process of law.” The Due Process Clause of the Fourteenth Amendment applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent. The New Ordinance violates the Due Process Clause of the Fourteenth Amendment because it deprives Plaintiffs of substantial liberty and property interests without either substantive or procedural due process of law.

129. Plaintiffs are subject to criminal penalties of up to \$500 per day for failing to comply with the terms of the New Ordinance which, among other things: (1) requires Smith to register her residence with the City and pay a fee in order to rent in the City; and (2) creates new obligations for the Villas Plaintiffs and unnecessarily burdens their ability to operate their business. In particular, under the New Ordinance, the Villas Plaintiffs’ license to operate an apartment complex can be suspended if an offense is committed, and Villas Plaintiffs are

obligated to expend funds to evict otherwise non-defaulting tenants. The New Ordinance also limits the ability of Plaintiffs to utilize their property and contractual rights in their leases.

a. **The New Ordinance fails to provide sufficient procedural due process.**

130. The New Ordinance does not contain sufficient procedural safeguards to protect these important interests. First, the New Ordinance provides inadequate notice. Indeed, the New Ordinance does not require actual notice of either the deficiency notice or the revocation notice. Further, the landlord is not provided a deficiency notice. Instead, a landlord will learn of a problem with the occupancy license only if it receives a notice of revocation, and it must remove the tenant within fifteen days of when the notice is sent.

131. Second, although a landlord commits an offense if it knows an occupant is occupying its property without a valid residential occupancy license, a landlord can only evict such an occupant after the license becomes invalid, at which point the landlord is already subject to a suspension of its license. In short, the New Ordinance provides no mechanism for a landlord to perform its obligations without subjecting it to liability.

132. Third, the New Ordinance provides no hearings. An occupant receives neither a hearing in front of a City official nor a federal official prior to the revocation of his or her license. Further, the New Ordinance provides no requirement of a hearing before the building inspector suspends a landlord's rental license and prohibits a landlord from collecting rents.

133. Fourth, the New Ordinance provides that an occupant can "obtain a correction of the federal government's records and/or provide additional information establishing that the occupant is not an alien not lawfully present in the United States." The New Ordinance provides no information regarding how to correct the "federal government's records" or what "additional information" would establish the occupant's lawful presence. Given that the New Ordinance does not state the criteria for denying a license or how the City is obtaining information from the

federal government, occupants cannot take the proper steps to protect their license from revocation.

134. Fifth, the New Ordinance makes it an offense for a landlord to allow an “occupant” to occupy a residence or apartment without a valid license. “Temporary guests” are not “occupants” and need not have a license. The term “temporary guest,” however, is not defined. The New Ordinance, thus, provides no standard for how long a person must be present before a landlord has committed an offense. Accordingly, the New Ordinance is void for vagueness.

135. Sixth, the New Ordinance fails to provide meaningful judicial review. The courts in Dallas County, Texas with jurisdiction over the New Ordinance are not competent to determine whether the federal government permits a particular alien to obtain housing in Farmers Branch. Further, the building inspector or other City official is not authorized or qualified to argue in a judicial proceeding that an alien is not lawfully present and, accordingly, the party subject to judicial review effectively lacks capacity. The New Ordinance also purports to take the “review” out of judicial review by creating a presumption based on a determination made by the “federal government” with no feasible method of challenging that determination.

136. Seventh, the New Ordinance subjects the Villas Plaintiffs to criminal prosecution and provides a vague and inadequate “defense.” The “offense” of allowing an occupant to occupy a residence or apartment without a license is unavoidable because a landlord cannot take action to remove the occupant until *after* the license is revoked. The only way a landlord can escape criminal liability is by proving his defense. Accordingly, the New Ordinance denies due process because it establishes a crime where the landlord is “guilty until proven innocent.” Further, the “defense to prosecution” only applies if the landlord “diligently pursue[s] such steps

as may be required under the applicable law and lease provisions to terminate the lease or tenancy.” The New Ordinance fails to define or provide adequate notice of what constitutes “diligent” pursuit in order to maintain the defense. Therefore, the New Ordinance is void for vagueness.

137. Each of these defects would alone render the New Ordinance invalid because each would deprive Plaintiffs of substantial rights without due process. The sheer number of constitutional shortcomings make it imperative for the Court to enjoin the New Ordinance before it goes into effect.

b. **The New Ordinance fails to meet the requirements of substantive due process.**

138. The New Ordinance substantially burdens the liberty and property interests of Plaintiffs and others. These burdens are imposed on Plaintiffs and others without due process of law because the New Ordinance is not rationally related to any legitimate municipal interest. The sole function of the residential licensing scheme created by the New Ordinance is to deny the license to certain aliens. Regulation of immigration is not a legitimate municipal interest as that function is reserved to the federal government. Accordingly, the New Ordinance is not rationally related to any legitimate municipal interest and must be enjoined because it substantially burdens the liberty and property interests of Plaintiffs without due process of law.

139. The New Ordinance compels disclosure of private information, such as the occupants of a household, including family members, in order to obtain housing. Farmers Branch cannot demonstrate a legitimate interest, much less a substantial or compelling interest, served by requiring all citizens and aliens to disclose such personal information. Moreover, Farmers Branch cannot establish a rational or substantial relationship between the alleged public

purpose and registration and licensing of occupants of rental housing. Accordingly, the New Ordinance burdens the privacy rights of Plaintiffs without due process of law.

140. The New Ordinance, therefore, deprives Plaintiffs of liberty and property interests without either substantive or procedural due process. Accordingly, the Court should preliminarily and permanently enjoin the effectuation and enforcement of the New Ordinance. Further, Plaintiffs have suffered injury to their property interests as a result of the enactment of the New Ordinance when such enactment served no legitimate public purpose. Plaintiffs are therefore entitled to recover their damages.

3. **The New Ordinance violates the Equal Protection Clause of the Fourteenth Amendment.**

141. The Fourteenth Amendment of the Constitution of the United States provides that “[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws.” Generally, the Equal Protection Clause requires all similarly situated persons be treated substantially alike. The Equal Protection Clause also prohibits municipalities from creating laws for the purpose of treating people differently based on race, alienage, or national origin.

142. The New Ordinance is facially unconstitutional because it treats citizens and aliens differently and denies housing to aliens but not citizens. Further, the City adopted the New Ordinance because of, not merely in spite of, its adverse effect upon a discrete minority—Hispanics. Merely by enacting the New Ordinance, the City achieved its purpose of discouraging Hispanics from renting in Farmers Branch. As the City intended, the New Ordinance will have a discriminatory effect if enforced because Hispanics are more likely to choose to live with someone ineligible for a residential occupancy permit.

143. The New Ordinance serves no compelling governmental purpose. In fact, the licenses issued in accordance with the New Ordinance exist solely to be denied to others.

Further, the City has offered no explanation as to how the New Ordinance is the least restrictive means for achieving its goals. Accordingly, the New Ordinance violates the Equal Protection Clause because it has a discriminatory purpose and effect, and is not the least restrictive means for accomplishing a compelling government purpose.

144. Finally, the New Ordinance also violates the Equal Protection Clause because it imposes obligations on those renting apartment complexes and single-family residences without imposing those obligations on other residents. Illegal aliens are not prohibited from owning a home or entering into commercial real estate transactions. Illegal aliens are not prohibited from living in a home unless they attempt to lease from the homeowner. Accordingly, there is no rational basis for requiring a license for residents who lease but not residents who do not lease.

145. The Court should declare the New Ordinance unconstitutional and enjoin the effectuation and enforcement of the New Ordinance because it violates the Equal Protection Clause. Further, because the enacting of discriminatory ordinances, including the New Ordinance, has had a discriminatory effect, Farmers Branch should be ordered to take affirmative action to encourage Hispanics to lease in Farmers Branch.

4. The New Ordinance infringes on the right to travel.

146. Citizens of the United States have the right to travel and move from one state to another and within one state. This right is protected by the Privileges and Immunities clauses of both the Fourteenth Amendment and Article IV, Section 2 of the Constitution of the United States. A state or municipality cannot deny a citizen the right to reside in that state or municipality, nor can it deter or attempt to deter a citizen from moving into the state or municipality. By licensing the right to rent in Farmers Branch, the New Ordinance unconstitutionally limits the ability of citizens of the United States to move into Farmers Branch.

147. In particular, the New Ordinance prohibits potential renters from signing a lease for an abode in Farmers Branch until they obtain an occupancy permit. A potential renter, however, cannot obtain a permit without specifying the residence or apartment where he or she will be leasing. Accordingly, a potential renter must select a residence or apartment, apply and obtain a license for that apartment, and then sign a lease. This three-part process is needlessly burdensome for those already in Farmers Branch and surrounding communities. For those farther away and outside the state, however, the process is extremely burdensome and, indeed, unmanageable for some. Further, unless a potential landlord agrees to hold an apartment open until a license is obtained, an applicant cannot truthfully fill out an application for an occupancy license. Knowingly submitting false information is an offense under the New Ordinance.

148. Accordingly, the New Ordinance deters interstate and intrastate travel (and commerce) by placing considerable burdens on the ability of citizens to obtain housing if they do not already live or work in close proximity to Farmers Branch. Because the New Ordinance interferes with the right to travel without serving an legitimate public interest, Plaintiffs request that the Court enjoin the effectuation and enforcement of the New Ordinance.

5. **The New Ordinance violates the Commerce Clause of the United States Constitution.**

149. Plaintiffs hereby incorporate the allegations in the preceding paragraphs as if fully set forth herein.

150. Article I Section 8 of the Constitution of the United States gives Congress the power to “regulate Commerce with foreign Nations, and among the several States.” State or local government regulations that unduly burden interstate commerce or discriminate against non-local interests, in either purpose or effect, violate the Commerce Clause.

151. By requiring prospective tenants to obtain occupancy licenses before moving to Farmers Branch, the New Ordinance places substantial and undue burdens on those seeking to move to Farmers Branch from other localities or states.

152. Further, the New Ordinance will have a discriminatory effect on interstate commerce because prospective tenants from out of state will be burdened more than those already residing in Farmers Branch. In particular, the New Ordinance does not require an occupancy license for existing leases. Non-residents are subjected to the licensing scheme while current residents are not.

153. The purpose of the New Ordinance is also discriminatory because Farmers Branch seeks to push “undesirable” people who allegedly “burden” the public into other cities and states. Attempting to shift burdens to other localities violates the Commerce Clause.

154. Once again, no local interests allegedly protected by the New Ordinance outweigh the burdens placed on interstate commerce or justify the discrimination against non-Farmers Branch residents. The only function of the licensing scheme is to deny the license to certain aliens, although regulation of immigration is not a legitimate municipal interest.

155. Accordingly, the New Ordinance violates the Commerce Clause, and Plaintiffs request that the Court enjoin its effectuation and enforcement.

C. Count Three: Violation Of The Fair Housing Act 42 U.S.C. § 3601.

156. Plaintiffs hereby incorporate the allegations in the preceding paragraphs as if fully set forth herein.

157. The City has violated the Fair Housing Act (“FHA”), 42 U.S.C. § 3601, *et. seq.*, in at least three ways. Under the FHA, it is unlawful to: (1) make unavailable or deny a dwelling to any person because of race, color, familial status, or national origin; (2) directly or indirectly make, print, or publish any notice, statement, or advertisement with respect to the

rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, familial status, or national origin; or (3) to induce or attempt to induce, for profit, any person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of persons of a particular race, color, familial status, or national origin.

158. First, the New Ordinance is an attempt by the City to make rental housing unavailable to Hispanics and children of illegal aliens. By creating incentives for landlords to discriminate, denying housing to families of mixed citizenship, and targeting only renters, the City, through the New Ordinance, intends to make housing unavailable to Hispanics. Further, City leaders have repeatedly stated—without evidence—that children of illegal immigrants are a burden on the school system. Because the City cannot deny children of illegal immigrants the fundamental right to an education directly, the City has sought to deny them housing based on their familial connection to their parents, who will be denied a license. The New Ordinance is an attempt to deny housing to schoolchildren based on familial status.

159. Second, City leaders and a task force commissioned by the City, have stated that the number of Hispanic residents in Farmers Branch is too high and that the children of illegal immigrants are unwelcome in Farmers Branch. The passage of the unconstitutional New Ordinance is yet another highly publicized statement by the City that it prefers that whites, and not Hispanics, rent in Farmers Branch.

160. Third, in order to increase tax revenues, the City is attempting to induce new development by making representations that the number of Hispanics residing in Farmers Branch will decrease and that the number of white residents will increase.

161. The City is, therefore, engaged in discriminatory housing practices that have harmed and will harm Plaintiffs. Accordingly, Plaintiffs may obtain damages under 42 U.S.C. §

3613, injunctive relief to prohibit enforcement of the New Ordinance, and affirmative relief requiring the City take actions to remedy the discriminative effects of its past and present violations of the FHA.

D. Count Four: Violation Of 42 U.S.C. § 1981.

162. Plaintiffs hereby incorporate the allegations in the preceding paragraphs as if fully set forth herein.

163. Title 42, Section 1981 of the United States Code (“Section 1981”) provides that “all persons” within the jurisdiction of the United States shall have the same rights enjoyed by citizens: (1) to make and enforce contracts; and (2) to have the full and equal benefit of all laws and proceedings for the security of persons and property. Tenants in Farmers Branch are “persons” within the jurisdiction of the United States.

164. Citizens in Farmers Branch are permitted to make contracts with landlords but, as a result of the New Ordinance, other persons cannot. Further, the New Ordinance requires aliens and others without a license to abandon their leases without a hearing or face criminal penalties. By prohibiting occupancy without a license and denying that license to certain aliens, the City has created a class of people who must surrender possession of their leasehold property without an eviction proceeding. Accordingly, the New Ordinance violates Section 1981.

165. If enforced, the New Ordinance will violate the rights secured by Section 1981. Accordingly, Plaintiffs are entitled to a declaration that the New Ordinance violates Section 1981 and an injunction preventing effectuation and enforcement of the New Ordinance.

E. Count Five: Violation Of The Equal Rights Amendment Of The Texas Constitution.

166. Plaintiffs incorporates the allegations in the preceding paragraphs as if set forth fully in this paragraph.

167. The New Ordinance violates the Equal Rights Amendment to the Texas Constitution. Article III, section 3(a) of the Texas Constitution, provides “equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin.” The guarantees contained in the Equal Rights Amendment to the Texas Constitution are applicable to all persons within the jurisdiction of Texas.

168. The New Ordinance discriminates against Hispanics both in intent and effect. Accordingly, the New Ordinance violates the Equal Rights Amendment to the Texas Constitution, and its enforcement and effectuation should be enjoined.

F. Count Six: Attorneys’ Fees.

169. Plaintiffs hereby incorporate the allegations in the preceding paragraphs as if fully set forth herein.

170. As a result of the City’s conduct, Plaintiffs have been required to obtain the undersigned counsel to prosecute and present the claims asserted herein.

171. This action is a suit to enforce the provisions of 42 U.S.C. § 1981 and 42 U.S.C. § 1983. Accordingly, Plaintiff may recover attorneys’ fees under 42 U.S.C. § 1988(c). Additionally, Plaintiff may recover attorneys’ fees and costs under 42 U.S.C. § 3613(c)(2).

VI.

JURY DEMAND

Plaintiffs hereby demand a trial by jury of all issues so triable.

VII.

REQUEST FOR RELIEF

In light of the foregoing, Plaintiffs request that the Court, upon notice to Defendant, issue a temporary restraining order and, following any necessary hearing with respect thereto, enter a preliminary injunction prohibiting the effectuation and enforcement of the New Ordinance


pending entry of a final judgment in favor of Plaintiffs and against Farmers Branch, providing for the following relief:

1. A declaration that Ordinance 2952 is unconstitutional and contrary to applicable federal and state law;
2. A permanent injunction prohibiting the effectuation, enforcement, and threatened enforcement of Ordinance 2952;
3. A declaration that the City adopted Ordinances 2892, 2903, and 2952 for the unlawful purpose of discriminating against Hispanics;
4. A permanent injunction prohibiting the City from enacting, effectuating, or enforcing any lease-related licensing ordinances which address citizenship or immigration status without making, recording, and retaining factual findings concerning the problem to be resolved and considering available alternatives;
5. An order requiring the City to take affirmative steps to remedy past discrimination, including the publication of statements in at least two newspapers of general circulation, and on its official municipal website, that Farmers Branch welcomes minority, and especially Hispanic, renters;
6. Other affirmative injunctive relief to remediate the discriminatory effect of the City's unconstitutional actions;
7. Actual, compensatory, and incidental damages;
8. An award of reasonable attorneys' fees pursuant to 42 U.S.C. § 1988(c), 42 U.S.C. § 3613(c)(2), and any other applicable statute;
9. Costs of Court; and
10. Any other relief, at law or in equity, to which Plaintiffs may be entitled and which this Court deems just and proper.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS



**CITY OF FARMERS BRANCH
ORDINANCE NO. 2952**

AN ORDINANCE PROVIDING FOR RESIDENTIAL OCCUPANCY LICENSES; PROVIDING FOR VERIFICATION OF ALIENS' IMMIGRATION STATUS WITH THE FEDERAL GOVERNMENT CONSISTENT WITH FEDERAL LAW; CREATING OFFENSES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR JUDICIAL REVIEW; PROVIDING A PENALTY; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, federal law prescribes certain conditions (found principally in Title 8, United States Code, Sections 1101, *et seq.*), that must be met before an alien may be lawfully present in the United States; and

WHEREAS, aliens not lawfully present in the United States, as determined by federal law, do not meet such conditions as a matter of law when present in the City of Farmers Branch; and

WHEREAS, pursuant to Title 8, United States Code Sections 1621, *et seq.*, certain aliens not lawfully present in the United States are not eligible for certain State or local public benefits, including licenses; and

WHEREAS, Title 8, United States Code, Section 1324(a)(1)(A), prohibits the harboring of aliens not lawfully present in the United States, including, as the courts of the United States have held, the provision of residential accommodations to such aliens; and

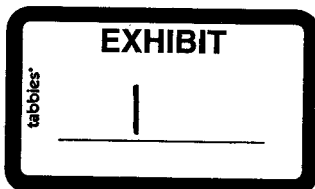
WHEREAS, the City of Farmers Branch is authorized to adopt ordinances pursuant to its police power to protect the health, safety, and welfare of its citizens; and

WHEREAS, the City of Farmers Branch is authorized to adopt regulations touching on aliens that are consistent with pertinent federal laws; and

WHEREAS, it is the intent of the City of Farmers Branch to enact regulations that are harmonious with federal immigration law and which aid in its enforcement; and

WHEREAS, it is not the intent of the City of Farmers Branch to alter, supplant, disrupt, or interfere with federal immigration law; and

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Ord. 2952.DOC



WHEREAS, the provisions of this ordinance shall be applied uniformly and in a nondiscriminatory manner, and the application of these provisions must not differ based on a person's race, religion, or national origin; and

WHEREAS, the City of Farmers Branch has complied with all prerequisites for the passage of this Ordinance; and

WHEREAS, the meeting at which this Ordinance was adopted was properly posted in accordance with the Open Meetings Act, and this Ordinance was considered and approved in an open meeting of the City Council with opportunity for public comment regarding its terms and provisions; and

WHEREAS, the purposes of this Ordinance are to promote the public health, safety, and general welfare,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS:

Section 1: Chapter 26, Businesses, Article III, Single-Family Rental Housing, of the Code of Ordinances, City of Farmers Branch, Texas, is hereby amended by adding the following as Section 26-79:

"Section 26-79. Citizenship or Immigration Status Verification

(A) Definitions

The following terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, and shall be construed so as to be consistent with state and federal law, including federal immigration law:

- (1) "Alien" means any person not a citizen or national of the United States, as set forth in Title 8, United States Code, Section 1101(3), as amended.
- (2) "Lessor" means a person who leases or rents a single family residence as or on behalf of a landlord.
- (3) "Occupant" means a person, age 18 or older, who resides at a single family residence. A temporary guest of an occupant is not an occupant for the purposes of this section.

(B) Residential Occupancy Licenses

- (1) Prior to occupying any leased or rented single-family residence, each occupant must obtain a residential occupancy license.
- (2) It is the occupant's responsibility to submit an occupancy license application to the building inspector, pay a fee of \$5 to the City, and obtain a

residential occupancy license. If there are multiple occupants seeking to occupy a single rental unit, each occupant must obtain his or her own residential occupancy license. Multiple applicants for occupancy of the same single family residence may designate one of their number as their agent to submit the required application forms, provided that each individual applicant signs his or her own application form. The building inspector may establish a procedure whereby an applicant (or designated agent) may submit the application form(s), signed by the applicant(s), via facsimile or website portal.

- (3) The lessor shall notify each prospective tenant of the requirements of paragraph (B)(2) of this section.
 - (4) A residential occupancy license is valid only for as long as the occupant continues to occupy the single family residence for which the license was issued. Any relocation to a different leased or rented dwelling unit requires a new residential occupancy license.
 - (5) An application for a residential occupancy license shall be made on a form furnished by the building inspector for such purpose. The form shall require the following information:
 - (a) full legal name of the occupant;
 - (b) mailing address of the occupant;
 - (c) address of the single family residence for which the occupant is applying, if different from the mailing address;
 - (d) name and business address of the lessor;
 - (e) date of lease or rental commencement;
 - (f) date of birth of the occupant;
 - (g) the occupant's country of citizenship;
 - (h) if the applicant is a United States citizen or national, a signed declaration that the applicant is a United States citizen or national; the form shall state that it is a crime under Title 18, United States Code, Section 1015(e), for a person to knowingly make any false statement or claim that he or she is, or at any time has been, a citizen or national of the United States, with the intent to obtain on behalf of himself or herself, or any other person, any Federal or State benefit or service;
- or-
- (i) if the applicant is not a United States citizen or national, an identi-

fication number assigned by the federal government that the occupant believes establishes his or her lawful presence in the United States (examples include, but are not limited to: resident alien card number, visa number, "A" number, I-94 registration number, employment authorization number, or any other number on a document issued by the U.S. Government). If the applicant does not know of any such number, he or she shall so declare. Such a declaration shall be sufficient to satisfy this requirement.

- (6) Upon receipt of the completed application and the payment of the application fee as set forth above, the building inspector shall immediately issue a residential occupancy license. The building inspector shall not deny a residential occupancy license to any occupant who submits a completed application and pays the application fee.
- (7) The information provided on an application may be disclosed to the federal government according to paragraph (D) of this section, pursuant to Title 8, United States Code, Section 1373.

(C) Offenses

- (1) It shall be an offense for a person to be an occupant of a leased or rented single family residence without first obtaining a valid occupancy license permitting the person to occupy that single family residence.
- (2) It shall be an offense for a person to knowingly make a false statement of fact on an application for a residential occupancy license.
- (3) It shall be an offense for a person to create, possess, sell, or distribute a counterfeit residential occupancy license.
- (4) It shall be an offense for a lessor to lease or rent a single family residence without obtaining and retaining a copy of the residential occupancy license of any and all known occupants.
- (5) It shall be an offense for a landlord to fail to maintain at the landlord's residence or regular place of business a copy of the residential occupancy license of each known occupant of a leased or rented single-family residence, or to fail to make such copy available for inspection by the Building Inspector during regular business hours.
- (6) It shall be an offense for a lessor to lease a single family residence without including in the terms of the lease a provision stating that occupancy of the premises by a person, age 18 or older, who does not hold a valid residential occupancy license constitutes an event of default under the lease.
- (7) It shall be an offense for a landlord or any agent of a landlord with authority to initiate proceedings to terminate a lease or tenancy to knowingly permit an occupant to occupy a single family residence without a valid

residential occupancy license. It is a defense to a prosecution under this paragraph that the landlord or agent has commenced and diligently pursued such steps as may be required under the applicable law and lease provisions to terminate the lease or tenancy.

(D) Enforcement

The building inspector shall enforce the requirements of this section as follows.

- (1) Promptly after issuance of a residential occupancy license to any occupant who has not declared himself or herself to be either a citizen or a national of the United States in accordance with paragraph (B)(5)(h) of this section, the building inspector shall, pursuant to Title 8, United States Code, Section 1373(e), verify with the federal government whether the occupant is an alien lawfully present in the United States. The building official shall submit to the federal government the identity and status information contained on the application for the residential occupancy license, along with any other information requested by the federal government.
- (2) If the federal government reports the status of the occupant as an alien not lawfully present in the United States, the building inspector shall send the occupant, at the address of the single family residence shown on the application for residential occupancy license, a deficiency notice. The deficiency notice shall state that on or before the 60th day following the date of the notice, the occupant may obtain a correction of the federal government's records and/or provide additional information establishing that the occupant is not an alien not lawfully present in the United States. If the occupant provides such additional information, the building inspector shall promptly submit that information to the federal government. The occupant may also submit information directly to the federal government.
- (3) If the federal government notifies the building inspector that it is unable to conclusively verify or ascertain the immigration status of the occupant, or that the federal government's determination of immigration status is tentative, the building inspector shall take no further action until final verification from the federal government concerning the immigration status of the occupant is received. The building inspector shall not attempt to make an independent determination of any occupant's lawful or unlawful presence in the United States. If the federal government notifies the building inspector that more information is required before the federal government can issue a final verification of the occupant's immigration status, or that the occupant may contest the federal government's determination of status, the building inspector shall notify the occupant accordingly.
- (4) No earlier than the 61st day after a deficiency notice has been sent to an occupant, the building inspector shall again make an inquiry to the federal government seeking to verify or ascertain the citizenship or immigration

status of the occupant. If the federal government reports that the occupant is an alien who is not lawfully present in the United States, the building inspector shall send a revocation notice to both the occupant and the lessor. The revocation notice shall revoke the occupant's residential occupancy license effective 15 days after the date of the revocation notice.

- (5) If a landlord or the landlord's agent commits an offense under paragraph (C)(7) of this section, the building inspector shall suspend the landlord's rental license.
 - (6) During the period of suspension, the landlord shall not collect any rent, payment, fee, or any other form of compensation from, or on behalf of, any occupant or tenant in the single family residence.
 - (7) The suspension shall terminate one day after the landlord or the landlord's agent submits to the building inspector a sworn affidavit of the owner or agent stating that each and every violation of paragraph (C)(7) of this section on which revocation was based has ended. The affidavit shall include a description of the specific measures and actions taken to end the violation.
 - (8) The suspension of a landlord's rental license may be appealed to the city council pursuant to Section 26-78.
 - (9) The terms of this section shall be applied uniformly, and enforcement procedures shall not differ based on a person's race, ethnicity, religion, or national origin.
- (E) Judicial Review**
- (1) Any landlord or occupant who has received a deficiency notice or a revocation notice may seek judicial review of the notice by filing suit against the building inspector in a court of competent jurisdiction in Dallas County, Texas.
 - (2) In the event that such a suit is filed prior to or within 15 days after the date of the revocation notice, if any, revocation is automatically stayed until final conclusion of judicial review.
 - (3) The landlord or occupant may seek judicial review of the question of whether the building inspector complied with the provisions of this ordinance or other relevant provisions of federal, state, or local law, or the question of whether the occupant is lawfully present in the United States, or of both such questions.
 - (4) In a suit for judicial review in which the question of whether the occupant is lawfully present in the United States is to be decided, that question shall be determined under federal law. In answering the question, the court

shall be bound by any conclusive determination of immigration status by the federal government. A determination is conclusive if, under federal law, it would be given preclusive effect on the question.

- (5) The court shall take judicial notice of any verification of the citizenship or immigration status of the occupant previously provided by the federal government. The court may, and at the request of a party shall, request the federal government to provide, in automated, documentary, or testimonial form, a new verification of the citizenship or immigration status of the occupant pursuant to Title 8, United States Code, Section 1373(c). The most recent determination of the immigration status of an individual by the federal government shall create a rebuttable presumption as to the individual's immigration status.

(F) Construction

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

Section 2: Chapter 26, Businesses, Article III, Single-Family Rental Housing, of the Code of Ordinances, City of Farmers Branch, Texas, is hereby amended by adding the following as paragraph (f) of Section 26-78, Appeals to the City:

"(f) This section does not apply to any decision or order of the building inspector issuing a deficiency notice or a revocation notice with respect to a residential occupancy license pursuant to Sections 26-79(D)(2) or 26-79(D)(4). Any such decision or order may be appealed only through a suit for judicial review pursuant to Section 26-79(E)."

Section 3: Chapter 26, Businesses, Article IV, Apartment Complex Rental, of the Code of Ordinances, City of Farmers Branch, Texas, is hereby amended by adding the following as Section 26-119:

"Section 26-119. Citizenship or Immigration Status Verification

(A) Definitions

The following terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, and shall be construed so as to be consistent with state and federal law, including federal immigration law:

- (1) "Alien" means any person not a citizen or national of the United States, as set forth in Title 8, United States Code, Section 1101(3), as amended.
- (2) "Apartment" means a dwelling unit within an apartment complex.

- (3) "Landlord" means the owner of an apartment.
- (4) "Lessor" means a person who leases or rents an apartment as or on behalf of a landlord.
- (5) "Occupant" means a person, age 18 or older, who resides at an apartment. A temporary guest of an occupant is not an occupant for the purposes of this section.

(B) Residential Occupancy Licenses

- (1) Prior to occupying any leased or rented apartment, each occupant must obtain a residential occupancy license.
- (2) It is the occupant's responsibility to submit an occupancy license application to the building inspector, pay a fee of \$5 to the City, and obtain a residential occupancy license. If there are multiple occupants seeking to occupy a single apartment, each occupant must obtain his or her own residential occupancy license. Multiple applicants for occupancy of the same apartment may designate one of their number as their agent to submit the required application forms, provided that each individual applicant signs his or her own application form. The building inspector may establish a procedure whereby an applicant (or designated agent) may submit the application form(s), signed by the applicant(s), via facsimile or website portal.
- (3) The lessor shall notify each prospective tenant of the requirements of paragraph (B)(2) of this section.
- (4) A residential occupancy license is valid only for as long as the occupant continues to occupy an apartment within the same apartment complex as the apartment for which the license was issued. Any relocation to a leased or rented single-family residence or to an apartment within a different apartment complex requires a new residential occupancy license.
- (5) An application for a residential occupancy license shall be made on a form furnished by the building inspector for such purpose. The form shall require the following information:
 - (a) full legal name of the occupant;
 - (b) mailing address of the occupant;
 - (c) address of the apartment for which the occupant is applying, if different from the mailing address;
 - (d) name and business address of the lessor;

- (e) date of lease or rental commencement;
- (f) date of birth of the occupant;
- (g) the occupant's country of citizenship;
- (h) if the applicant is a United States citizen or national, a signed declaration that the applicant is a United States citizen or national; the form shall state that it is a crime under Title 18, United States Code, Section 1015(e), for a person to knowingly make any false statement or claim that he or she is, or at any time has been, a citizen or national of the United States, with the intent to obtain on behalf of himself or herself, or any other person, any Federal or State benefit or service;

-or-

- (i) if the applicant is not a United States citizen or national, an identification number assigned by the federal government that the occupant believes establishes his or her lawful presence in the United States (examples include, but are not limited to: resident alien card number, visa number, "A" number, I-94 registration number, employment authorization number, or any other number on a document issued by the U.S. Government). If the applicant does not know of any such number, he or she shall so declare. Such a declaration shall be sufficient to satisfy this requirement.
- (6) Upon receipt of the completed application and the payment of the application fee as set forth above, the building inspector shall immediately issue a residential occupancy license. The building inspector shall not deny a residential occupancy license to any occupant who submits a completed application and pays the application fee.
- (7) The information provided on an application may be disclosed to the federal government according to paragraph (D) of this section, pursuant to Title 8, United States Code, Section 1373.

(C) Offenses

- (1) It shall be an offense for a person to be an occupant of a leased or rented apartment without first obtaining a valid occupancy license permitting the person to occupy that apartment.
- (2) It shall be an offense for a person to knowingly make a false statement of fact on an application for a residential occupancy license.
- (3) It shall be an offense for a person to create, possess, sell, or distribute a counterfeit residential occupancy license.
- (4) It shall be an offense for a lessor to lease or rent an apartment without ob-

taining a copy of the residential occupancy license of any and all known occupants.

- (5) It shall be an offense for a person responsible for the management of an apartment complex to fail to maintain on the premises of the apartment complex a copy of the residential occupancy license of each known occupant of the apartment complex, or to fail to make such copy available for inspection by the Building Inspector during regular business hours.
- (6) It shall be an offense for a lessor to lease an apartment without including in the terms of the lease a provision stating that occupancy of the premises by a person, age 18 or older, who does not hold a valid residential occupancy license constitutes an event of default under the lease.
- (7) It shall be an offense for a landlord or any agent of a landlord with authority to initiate proceedings to terminate a lease or tenancy to knowingly permit an occupant to occupy an apartment without a valid residential occupancy license. It is a defense to a prosecution under this paragraph that the landlord or agent has commenced and diligently pursued such steps as may be required under the applicable law and lease provisions to terminate the lease or tenancy.

(D) Enforcement

The building inspector shall enforce the requirements of this section as follows.

- (1) Promptly after issuance of a residential occupancy license to any occupant who has not declared himself or herself to be either a citizen or a national of the United States in accordance with paragraph (B)(5)(h) of this section, the building inspector shall, pursuant to Title 8, United States Code, Section 1373(c), verify with the federal government whether the occupant is an alien lawfully present in the United States. The building official shall submit to the federal government the identity and status information contained on the application for the residential occupancy license, along with any other information requested by the federal government.
- (2) If the federal government reports the status of the occupant as an alien not lawfully present in the United States, the building inspector shall send the occupant, at the address of the apartment shown on the application for residential occupancy license, a deficiency notice. The deficiency notice shall state that on or before the 60th day following the date of the notice, the occupant may obtain a correction of the federal government's records and/or provide additional information establishing that the occupant is not an alien not lawfully present in the United States. If the occupant provides such additional information, the building inspector shall promptly submit that information to the federal government. The occupant may also submit information directly to the federal government.

- (3) If the federal government notifies the building inspector that it is unable to conclusively verify or ascertain the immigration status of the occupant, or that the federal government's determination of immigration status is tentative, the building inspector shall take no further action until final verification from the federal government concerning the immigration status of the occupant is received. The building inspector shall not attempt to make an independent determination of any occupant's lawful or unlawful presence in the United States. If the federal government notifies the building inspector that more information is required before the federal government can issue a final verification of the occupant's immigration status, or that the occupant may contest the federal government's determination of status, the building inspector shall notify the occupant accordingly.
 - (4) No earlier than the 61st day after a deficiency notice has been sent to an occupant, the building inspector shall again make an inquiry to the federal government seeking to verify or ascertain the citizenship or immigration status of the occupant. If the federal government reports that the occupant is an alien who is not lawfully present in the United States, the building inspector shall send a revocation notice to both the occupant and the lessor. The revocation notice shall revoke the occupant's residential occupancy license effective 15 days after the date of the revocation notice.
 - (5) If a landlord or the landlord's agent commits an offense under paragraph (C)(7) of this section, the building inspector shall suspend the landlord's apartment complex license.
 - (6) During the period of suspension, the landlord shall not collect any rent, payment, fee, or any other form of compensation from, or on behalf of, any occupant or tenant in the apartment complex.
 - (7) The suspension shall terminate one day after the landlord or the landlord's agent submits to the building inspector a sworn affidavit of the owner or agent stating that each and every violation of paragraph (C)(7) of this section on which revocation was based has ended. The affidavit shall include a description of the specific measures and actions taken to end the violation.
 - (8) The suspension of a landlord's rental license may be appealed to the city council pursuant to Section 26-118.
 - (9) The terms of this section shall be applied uniformly, and enforcement procedures shall not differ based on a person's race, ethnicity, religion, or national origin.
- (E) **Judicial Review**
- (1) Any landlord or occupant who has received a deficiency notice or a

revocation notice may seek judicial review of the notice by filing suit against the building inspector in a court of competent jurisdiction in Dallas County, Texas.

- (2) In the event that such a suit is filed prior to or within 15 days after the date of the revocation notice, if any, revocation is automatically stayed until final conclusion of judicial review.
- (3) The landlord or occupant may seek judicial review of the question of whether the building inspector complied with the provisions of this ordinance or other relevant provisions of federal, state, or local law, or the question of whether the occupant is lawfully present in the United States, or of both such questions. The landlord or occupant may seek judicial review of the question of whether the building inspector complied with the provisions of this ordinance or other relevant provisions of federal, state, or local law, or the question of whether the occupant is lawfully present in the United States, or of both such questions.
- (4) In a suit for judicial review in which the question of whether the occupant is lawfully present in the United States is to be decided, that question shall be determined under federal law. In answering the question, the court shall be bound by any conclusive determination of immigration status by the federal government. A determination is conclusive if, under federal law, it would be given preclusive effect on the question.
- (5) The court shall take judicial notice of any verification of the citizenship or immigration status of the occupant previously provided by the federal government. The court may, and at the request of a party shall, request the federal government to provide, in automated, documentary, or testimonial form, a new verification of the citizenship or immigration status of the occupant pursuant to Title 8, United States Code, Section 1373(c). The most recent determination of the immigration status of an individual by the federal government shall create a rebuttable presumption as to the individual's immigration status.

(F) Construction

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

Section 4: Chapter 26, Businesses, Article IV, Apartment Complex Rental, of the Code of Ordinances, City of Farmers Branch, Texas, is hereby amended by adding the following as paragraph (f) of Section 26-118, Appeals to the City:

"(f) This section does not apply to any decision or order of the building inspector issuing a deficiency notice or a revocation notice with respect to a resi-

dential occupancy license pursuant to Sections 26-119(D)(2) or 26-119(D)(4). Any such decision or order may be appealed only through a suit for judicial review pursuant to Section 26-119(D)(9)."

Section 5: Penalty

Upon conviction, any person committing any act or omission declared to be an offense under the provisions of this ordinance shall be fined in a sum not to exceed \$500. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

Section 6: Severability

The terms and provisions of this ordinance are severable and are governed by Section 1-12 of the Code of Ordinances, City of Farmers Branch, Texas, as amended. If the application of this ordinance to any person, entity, or circumstance is invalid, the invalidity does not affect other applications of the ordinance that can be given effect without the invalid application, since the same would have been enacted by the City Council without regard to any such invalid application.

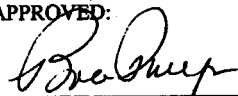
Section 7: Effective Date


This ordinance shall become effective on the 15th day after the date on which a final and appealable judgment is rendered by the United States District Court for the Northern District of Texas in the action styled *Villas at Parkside Partners d/b/a Villas at Parkside, et al. v. City of Farmers Branch*, Civil Action No. 3:06-CV-2371-L (consolidated with Civil Actions Nos. 3:06-CV-2376-L and 3:07-CV-0061-L). The city secretary is directed to, within 15 days after such a judgment is rendered, publish notice of the date on which this ordinance will take effect in the official city newspaper and on the city's website.

This ordinance applies only to leases or tenancies that commence on or after its effective date.

ATTEST:

Cindee Peters, City Secretary

APPROVED:

Bob Phelps, Mayor

APPROVED AS TO FORM:

City Attorney

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.

I. (a) PLAINTIFFS See attached **DEFENDANTS** The City of Farmers Branch, Texas

(b) County of Residence of First Listed Plaintiff Dallas County of Residence of First Listed Defendant Dallas
 (EXCEPT IN U.S. PLAINTIFF CASES) (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorney's (Firm Name, Address, and Telephone Number) William A. Brewer III, Bickel & Brewer, 1717 Main St., Ste. 4800, Dallas, Texas, 75201, (214) 653-4000
 William "Trey" Dowdy, Strasburger & Price, 901 Main Street, Ste. 4400, Dallas, Texas, 75202, (214) 651-4300

SEP - 3 2008
 U.S. DISTRICT COURT
 NORTHERN DISTRICT OF TEXAS

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND TO SOLVE

3-08CV1551-B **3-08CV1551-B**

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 see attached

Brief description of cause:
 see attached

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____ **CHECK YES only if demanded in complaint:**
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE Lindsay, Sam, A. DOCKET NUMBER 3:06-CV-2371

DATE 9-3-08 SIGNATURE OF ATTORNEY OF RECORD *June S. Price*

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

I. Plaintiffs

Villas at Parkside Partners d/b/a Villas at Parkside, Lakeview at Parkside Partners d/b/a Lakeview at Parkside, Chateau Ritz Partners d/b/a Chateau De Ville and Mary Miller Smith.

VI. Cause of Action

Cite the U.S. Civil Statute under which you are filing: 42 U.S.C. § 1981, 42 U.S.C. § 1983, 42 U.S.C. § 3610

Brief description of cause: Civil rights action seeking damages, declaratory , and injunctive relief regarding Defendant's unconstitutional ordinance.

VII. Requested in Complaint

Demand \$: Damages, declaratory, and injunctive relief