

ORDINANCE NO. 2006-38 R

AN ORDINANCE OF THE CITY OF ESCONDIDO,
CALIFORNIA ESTABLISHING PENALTIES FOR
THE HARBORING OF ILLEGAL ALIENS IN THE
CITY OF ESCONDIDO

The City Council of the City of Escondido, California, DOES HEREBY ORDAIN
as follows:

SECTION 1. FINDINGS. The people of the City of Escondido find and declare:

1. Federal law requires that certain conditions be met before an alien may be authorized to be a lawful permanent resident, or be lawfully present, in the United States. Those conditions are found principally at United States Code Title 8, section 1101 et. seq.

2. Illegal aliens, as defined by federal law, do not normally meet such conditions as a matter of law when present in the City.

3. The harboring of illegal aliens in dwelling units in the City, and crime committed by illegal aliens harm the health, safety and welfare of legal residents in the City.

Because such individuals are not in this country lawfully, there is an increased chance that they will reside in dwelling units without typical leasing, payment and other tenancy arrangements that enable the civil and regulatory processes of this City to be effective. The regulations of the City regarding housing and property maintenance often depend upon reporting by residents and neighbors as a means of bringing unlawful conditions to the City's attention. Because illegal aliens do not wish to call attention to their presence, such individuals are less likely to report such conditions, and notify authorities, or to participate in subsequent proceedings to remedy such conditions. This creates an increased likelihood that housing and property maintenance violations will

remain unreported and, because such conditions are unreported, an increased chance that such conditions will multiply in the future.

Because of the lack of tenancy arrangements which are subject to normal civil and regulatory processes (such as written leases, records of rent receipts, and related documentation which normally accompany a tenancy arrangement) there is a greater chance that such individuals will occupy residential units in excessively large numbers, or under living conditions, that do not meet applicable building and health and safety codes. This creates unanticipated burdens on the units and the public infrastructure supporting such dwellings.

4. The state and federal government lack the resources to properly protect the citizens of the City of Escondido from the adverse effects of the harboring of illegal aliens, and the criminal activities of some illegal aliens.

5. The City finds that it is in the best interest of and will serve and benefit the health, safety and welfare of the public and law-abiding business entities and property owners to adopt policies and procedures to deter and prevent the harboring of illegal aliens, and criminal activity by illegal aliens.

6. United States Code Title 8, subsection 1324(a)(1)(A) prohibits the harboring of illegal aliens. The provision of housing to illegal aliens is a fundamental component of harboring.

7. The City shall not construe this Ordinance to prohibit the rendering of emergency medical care, emergency assistance, or legal assistance to any person.

SECTION 2. DEFINITIONS. The following definition shall be added to Section 16-3, and shall be construed so as to be consistent with state and federal law, including federal immigration law:

Illegal Alien: An alien who is not lawfully present in the United States, according to the terms of United States Code Title 8, section 1101 et seq. The City shall not conclude that a person is an illegal alien unless and until an authorized representative of the City has verified with the federal government, pursuant to United States Code Title 8, subsection 1373(c), that the person is an alien who is not lawfully present in the United States.

SECTION 3. HARBORING ILLEGAL ALIENS. The Escondido Municipal Code is amended to add Chapter 16E, commencing with Section 16E-1 to read as follows:

Section 16E-1. HARBORING ILLEGAL ALIENS. It is unlawful for any person or business entity that owns a dwelling unit in the City and is subject to Section 16-17, to harbor an illegal alien in the dwelling unit, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, unless such harboring is otherwise expressly permitted by federal law.

a. For the purposes of this section, to let, lease, or rent a dwelling unit to an illegal alien, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, shall be deemed to constitute harboring. To suffer or permit the occupancy of the dwelling unit by an illegal alien, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, shall also be deemed to constitute harboring.

b. A separate violation shall be deemed to have been committed on each day that such harboring occurs, and for each adult illegal alien harbored in the dwelling unit, beginning ten business days after receipt of a notice of violation from the City.

c. A separate violation of this section shall be deemed to have been committed for each business day on which the property owner has failed, following written notice from the City, to provide the City with identity data needed to obtain a federal verification of immigration status, beginning five business days after the property owner receives written notice from the City.

Section 16E-2 ENFORCEMENT. The Business License Division shall enforce the requirements of this section.

a. An enforcement action shall be initiated by means of a written signed complaint to the City submitted by any official, business entity, or resident of the City. A valid complaint shall include an allegation that describes the alleged violator(s) as well as the actions constituting the violation, and the date and location where such actions occurred.

b. A complaint which alleges a violation solely or primarily on the basis of national origin, ethnicity, or race shall be deemed invalid and shall not be enforced.

c. Upon receipt of a valid written complaint, the City shall, pursuant to United States Code Title 8, section 1373(c), verify with the federal government the lawful immigration status of a person seeking to use, occupy, lease, or rent a dwelling unit in the City. The Business License Division shall submit identity data required by the federal government to verify immigration status. The City shall forward identity data provided by the property owner to the federal government, and shall provide the property owner with written confirmation of such request for verification.

d. If after ten business days following receipt of written notice from the City that a violation has occurred and that the immigration status of any alleged illegal alien has been verified, pursuant to United States Code Title 8, section 1373(c), the owner of the dwelling unit fails to correct a violation of this section, the City shall deny or suspend the business license of the dwelling unit as provided in Section 16-235.

e. For the period of suspension, the owner of the dwelling unit shall not be permitted to collect any rent, payment, fee, or any other form of compensation from, or on behalf of, any tenant or occupant in the dwelling unit.

f. The denial or suspension shall terminate one business day after a legal representative of the dwelling unit owner submits, to the Business License Division, a sworn affidavit stating that each and every violation has ended. The affidavit shall include a description of the specific measures and actions taken by the business entity to end the violation, and shall include the name, address and other adequate identifying information for the illegal aliens who were the subject of the complaint.

g. The City shall forward the affidavit, complaint, and associated documents to the appropriate state or federal enforcement agency.

h. Any dwelling unit owner who commits a second or subsequent violation of this section shall be subject to penalties as provided in Section 16-249 for each separate violation. The suspension provisions of this section applicable to a first violation shall also apply.

i. Upon the request of a dwelling unit owner subject to this Section, the City shall, pursuant to United States Code Title 8, section 1373(c), verify with

the federal government the lawful immigration status of a person seeking to use, occupy, lease, or rent a dwelling unit in the City. The penalties in this section shall not apply in the case of occupants of a dwelling unit whose status as an alien lawfully present in the United States has been verified.

SECTION 4. CONSTRUCTION. The requirements and obligations of this section shall be implemented in a manner fully consistent with federal law regulating immigration and protecting the civil rights of all citizens and aliens.

SECTION 5. CERTIFICATION. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be prepared in accordance with Government Code Section 36933, to be published one time within 15 days of its passage in the North County Times, a newspaper of general circulation, printed and published in the City of Escondido.

SECTION 6. SEPARABILITY. If any section, subsection sentence, clause, phrase, or portion of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions.