

# Open House

NEWSLETTER OF THE FAIR HOUSING COUNCIL  
OF MONTGOMERY COUNTY

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## ANTI - IMMIGRATION ORDINANCES: WHY THEY ARE A FAIR HOUSING CONCERN

One of the touchiest subjects these days is about our national immigration policy and specifically about the 12 million people, primarily from Latin America, who are living in the U.S. as undocumented immigrants. Like past migrants, they've come because there is poverty at home and work here. Once an issue confined to border states in the Southwest, the debate now rages in many communities in the U.S., where concentrations of Spanish-speaking newcomers have drawn hostility from some locals who blame them for everything from parking congestion to municipal budget deficits.

Ordinances modeled after one in Hazleton, Pennsylvania have been drafted with the intent to remove anyone whose immigrant status is not immediately certifiable. Henceforth, "illegals" would be driven out of town via laws establishing English as the only official language, and by imposing sanctions for employers or landlords who hire or rent to them.

Naturally, as a fair housing agency, policies that may have a discriminatory impact on specific groups get our attention.

### Know the facts:

- ◆ The Fair Housing Act makes it illegal to discriminate based on national origin.
- ◆ The Fair Housing Act does not address immigration status; and there is no specific qualifying language.
- ◆ Legal immigrants are negatively impacted by enforcement of these ordinances.
- ◆ The Constitution gives the U.S. Congress the sole right to make immigration policy. Legislators are now revising these complex federal laws.

Are these ordinances legal? The answer is still unclear as they are being vigorously challenged in the courts (see page 3). The answer will reflect the policy ultimately decided by Congress. Meanwhile, people have questions about the housing implications of these laws – immigrants, landlords, ordinary citizens - and we will address them in this issue of **Open House**. We've included background information on the issue, updates on the ordinances, and opinions from three experts in fair housing or immigration law. Perhaps the best thing that people can do until the matter is resolved is to educate themselves on the issue.

## BACKGROUND ON THE ISSUE

Immigration from Latin American countries has accelerated in the past 20 years for a variety of reasons. Naturally in countries with stagnant economies, people are drawn to migration. But the real impetus has been that these migrants fill an unmet need for large numbers of lower wage, seasonal, un-skilled workers in our economy, particularly in key industries such as agriculture, construction, service & hospitality. In some of these industries undocumented workers comprise over 50% of the employees and make up at least 5% of the total American workforce, often living in a netherworld of physically demanding low wage jobs with few rights or benefits. However, geographic concentration and easily identifiable ethnicity of Spanish-speaking newcomers has drawn hostile attention from some citizens and city councils who have started to agitate for sealing off of the southern border and removal of the undocumented immigrants.

Although the Immigration Reform and Control Act of 1986\* (IRCA) requires employers to prove all employees hired after 11-6-86 are legally authorized to work in the United States, it is spottily enforced because of the persistent unmet need for workers in key industries of our economy. **\*NOTE: There is no comparable federal legislation requiring landlords to prove that tenants are legally authorized to live/work in the United States.**

Current inefficiencies and complexities of our outdated immigration system make it nearly impossible for business owners to quickly and economically obtain large numbers of low wage and/or seasonal workers for certain businesses. The U.S. Chamber of Commerce strongly supports reform of current immigration policy so they may obtain the workers they need. It is important to highlight that although Mexicans currently form the largest single ethnic group at the center of the immigration controversy, they do not represent the total "out of status" population. The remainder are com-

posed of many other nationalities who may have initially entered the U.S. with some sort of short term visa for travel, work, or school, which then expired. They did not go home as required and became undocumented. There is virtually no clamor for removal of these "other" undocumented immigrants.

Additionally, there are all sorts of situations and degrees of legal status depending on individual circumstances. People from certain countries can claim refugee status and other nationalities are favored because of current political interests of the United States. It is not just a matter of "legal" or "illegal". Proof of immigration status can be anything from a passport to a letter from the INS. An immigrant is not deemed illegal until an order for deportation has been issued. Although there are various ways for someone who arrived here undocumented or came with documents and overstayed to become a legal resident, it may be YEARS before that person obtains a clear residency permit - the coveted "green card".

Regardless of the outcome of the current legal challenges to local anti-immigrant ordinances, the hostile environment has already led many Latino residents, irrespective of legal status, to feel unwelcome and intimidated. Many have fled from their communities in fear that they will be targeted or ultimately lose their homes because of who they are and where they come from. This is where it becomes a Fair Housing issue.



## **IN OUR OWN BACKYARD - Bridgeport, Montgomery County, PA**

On November 28, 2006, the Bridgeport Borough Council adopted the Illegal Immigration Relief Act, an ordinance that bans undocumented migrants from working or renting property in Bridgeport. Landlords and employers who violate the ordinance are subject to stiff fines and loss of business licenses. The act was adopted in tandem with a rental registration ordinance which requires every renter in Bridgeport to obtain an occupancy permit, at which point individuals must produce documentation demonstrating legal status. Prior to the adoption of these ordinances, the Borough also adopted an English-Only ordinance that makes English the official language of Bridgeport.

These ordinances have sparked widespread concern throughout the region's Hispanic community. The Fair Housing Council responded by organizing with ACLAMO to sponsor a community forum and disseminated information to renters **and** landlords in the area who had no idea how they would also be negatively affected by the implementation of the ordinances. Although the Borough maintains the ordinances are a public safety issue, the negative impact is already being felt by the local residents of the Bridgeport community who have reported a rise in ethnic profiling and loss of rental housing and business opportunities.

On 12/28/06, after being threatened with a lawsuit by the Public Interest Law Center of Philadelphia and Reed Smith, the Borough of Bridgeport agreed to postpone enforcement of the three ordinances. In turn, the attorneys for community residents and organizations opposed to the ordinances have agreed not to file suit or seek an injunction without notice. Go to [www.fairhousingmontco.org](http://www.fairhousingmontco.org) to view the press release issued by the Fair Housing Council.

## **IN OTHER PARTS OF THE COUNTRY...**

**Hazleton, Pa .** - Hazleton, a small former coal-mining town in central Pennsylvania, made national headlines in July as it was the first town in the U.S. to pass an "Illegal Immigration Relief Act ". Since July, the ACLU and other local organizations and residents have been actively challenging the ordinance in court. Despite numerous amendments and newly proposed ordinances, the city of Hazleton continues to face injunctions and has been unsuccessful in enforcing the laws. In addition, protective orders were issued to preserve the anonymity of the plaintiffs listed as Jane/John Doe. A tentative trial date has been set for August 2007; however, many believe that the case will go to the U.S. Supreme Court, which could take as long as 5 years.

**Escondido, CA.** - In December of 2006, the city of Escondido agreed to a PERMANENT injunction against its controversial anti-immigrant ordinances and must pay the plaintiffs \$90,000 in legal fees. The decision is a result of what the attorneys argued as fundamental constitutional problems. The ordinances required landlords to submit proof of their tenants' immigration status to the city, who would then submit the information to the federal government for verification. If tenants were found to be undocumented, landlords would be given ten days to evict them or face penalties. Escondido was the largest city in the nation to pass such a law. Of the 142,00 residents, Latinos comprise 42% of the population.

**Avon Park, FL.** - A proposed ordinance modeled after Hazleton's anti-immigrant laws was rejected in July of 2006 after massive protests and much heated debate. The move to dismiss the ordinances was made because the city council had not been provided with sufficient evidence that undocumented immigrants were responsible for higher crime, failing schools, and over stretched public service systems as the mayor had asserted.

**For a comprehensive list of localities who have adopted or are currently considering similar proposals visit [www.prldef.org](http://www.prldef.org)**

# FROM THE LEGAL EXPERTS

To provide a legal viewpoint on issues related to anti-immigrant ordinances, the Council posed questions to Scott Chang, an attorney for Relman & Associates in Washington D.C., which has a nationwide practice specializing in representing plaintiffs in fair housing, fair lending, public accommodations and employment discrimination; Fernando Chung Mui, Professor of Immigration Law at the University of Pennsylvania School of Law; and Arthur Haywood, a fair housing attorney who provided an overview of a recent case about targeting Hispanics in code enforcement.



**The Fair Housing Act prohibits discrimination based on national origin but it doesn't specifically address questions of citizenship or legal status. What fair housing rights do non citizens and undocumented people have?**

**Scott Chang:** The Fair Housing Act does not expressly cover non-citizens and undocumented persons but covers persons in a protected class such as race or national origin regardless of their citizenship status. The Fair Housing Act protects “any person” in the protected classes against discrimination based on race or national origin. Persons who do not have citizenship status sometimes are reluctant to proceed with claims under the Fair Housing Act because they fear that they will be deported if their citizenship status is revealed. One federal Court of Appeals has held, however, that defendants should not be able to discover citizenship status of plaintiffs in employment discrimination cases because of the potential chill on the enforcement of civil rights. Defendants may similarly be barred from discovering immigration status in fair housing cases because of the potential chill on the enforcement of fair housing rights.

**Is it a violation of the Fair Housing Act when local municipalities adopt ordinances against “illegal immigrants” and impose stiff fines on landlords who rent to them?**

**Scott Chang:** Ordinances that require landlords not rent to “illegal immigrants” may lead to racial or ethnic profiling. Municipal ordinances that prohibit the renting of homes to “illegal immigrants” may cause landlords to refuse to rent to persons of a particular national origin or race in violation of the Fair Housing Act. Ordinances such as the Hazelton ordinance which explicitly allows the city to consider race, ethnicity or national origin in determining who may reside in Hazelton may violate the Fair Housing Act on their face.

**How far can states and local municipalities go in interpreting laws and polices that are the usual domain of the federal government—like immigration?**

**Fernando Chang-Mui:** The Constitution has laid this question to rest and it has been interpreted by the Courts to mean that any city or state statutes that smells or tastes like immigration, is within the jurisdiction of the federal government only.

# FROM THE LEGAL EXPERTS

## **TARGETING HISPANIC TENANTS AND BUILDINGS IS ILLEGAL**

**By Arthur Haywood, Haywood LLC**

An April 2006 decision of the Court of Appeals in Washington, D.C. confirmed that government policies and practices that target Hispanic neighborhoods or tenants with code enforcement actions violate federal fair housing law. This decision arose from a program of the District of Columbia to close the “worst” multi-family buildings in the District. Tenant groups claimed that the government focused on buildings that were in predominately Hispanic neighborhoods.

In April 2000 tenants from several multi-family buildings sued the government of the District of Columbia for closing buildings on a racially discriminatory basis. After a trial, the US Court of Appeals reviewed the records and made several observations and decisions regarding the dispute in the case of *2922 Sherman Avenue Tenants Association v District of Columbia*. First, the Court recognized that the neighborhoods that were targeted by the government for closure of buildings had at least 4 times more Hispanics than other neighborhoods in the District. The tenants showed that equal or worse multi-family buildings were in other areas of the District and not targeted for closure. Second, the government did not offer to repair the buildings in the Hispanic areas, although it did repair bad buildings in other parts of the District. Third, the government had no clear explanation as to why its list of properties for closure was in predominately Hispanic areas. The government claimed that it was seeking to protect the health, safety and welfare of tenants by closing the buildings.

The Court of Appeals stated that if the government addressed serious code violations differently in Hispanic and non-Hispanic neighborhoods then such action is illegal housing discrimination in violation of the Fair Housing Act. Governments cannot choose to close buildings or enforce codes in predominately Hispanic neighborhoods if they are not doing so in non-Hispanic neighborhoods.

The Sherman case makes it clear that targeting Hispanics with code enforcement actions is in violation of fair housing laws. By implication the practices of landlords to enforce different rental or leasing policies against Hispanics such as higher security deposits, higher rent, and higher standards for living are all in violation of federal fair housing laws.

For more information contact Arthur Haywood at 215. 849.7190.



## TIPS FOR LANDLORDS AND TENANTS

These are treacherous times for landlords – trying to navigate both fair housing laws and local ordinances and keep your property code compliant. Here are some relevant questions and answers.

### **Is it legal for a landlord to inquire about the legal status of their tenants?**

While the Fair Housing Act prohibits discrimination based on national origin, it makes no specific mention of a person's legal status. In 2001 HUD issued guidance that said it is not a violation of the law for landlords to ask applicants to provide documentation of legal status *if the landlord requires ALL applicants to provide this information*. Asking for immigration or citizenship documentation only from people who speak with an accent or seem to be “foreign” **IS** a civil rights violation. Most federally subsidized housing (i.e. Section 8 or public housing) require proof of legal residency to qualify.

### **Is it a crime to rent to a person who is not a legal resident?**

Under federal and state law it is not a crime to rent to undocumented immigrants. This means landlords don't have to reject tenants solely based upon their immigration status. Currently, there is some confusion about this because a few localities have attempted to enact laws that are more restrictive than federal and state laws. The legality of these local ordinances are currently being looked at by the courts and may be found to be in violation of the Fair Housing Act and other laws.

### **Is it illegal for a landlord to require a social security number from an applicant in order to rent an apartment?**

No, it's not illegal to require a social security number (SSN) from an applicant for the purposes of establishing identity or to obtain credit checks **as long as it is asked of all applicants**. But landlords should accept alternatives to SSN such as an Individual Taxpayer Identification Number (ITIN), a Voter Registration Card, Temporary Resident Cards, Employment Authorization Cards, or a drivers license to establish proof of identity.



Her Welcome  
Is Given  
to Every  
Nationality—  
including  
YOURS.

Housing discrimination against ANYONE based on national origin is a violation of federal and state law. Protections under the **Federal Fair Housing Act** supersede local ordinances. Local laws that attempt to target illegal immigrants may result in discrimination against citizens and legal immigrants.

***Everyone should know that under Fair Housing Laws:***

- There is no federal or state law that requires landlords to refuse to rent to tenants based upon their legal status.
- If landlords have a policy of renting only to citizens or legal residents, they must require the same documentation of legal status of every applicant/tenant.
- Denying housing to someone simply because they speak with an accent or seem to be “foreign” is a civil rights violation, subject to legal penalties.

**FAIR HOUSING - IT'S NOT AN OPTION.  
IT'S THE LAW!**

For more information, call the Fair Housing Council of Montgomery County 215.576.7711.



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In This Issue...

*Anti-Immigrant Legislation & Fair Housing Rights*



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