

Judge: Farmers Branch illegal immigrant rule unconstitutional

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TOOLS

FARMERS BRANCH — A federal judge found Wednesday that a Dallas suburb's rule prohibiting apartment rentals to illegal immigrants was unconstitutional and could not be enforced.

In his decision, U.S. District Judge Sam A. Lindsay concluded Farmers Branch didn't defer to the federal government in immigration matters. Instead, the city tried to create its own classification to determine which noncitizens could rent in Farmers Branch, the judge said.

Lindsay also wrote that the city's attempts to salvage the ordinance faltered because they would have required the court to draft laws. That function is outside of the court's duties.

Council members passed the ordinance last year. It would have barred apartment rentals to illegal immigrants and required landlords to verify legal status. The rule would have exempted minors and people 62 and older from having to prove their immigration status or citizenship.

Families made up of citizens and undocumented members would have been allowed to renew an apartment lease if they met three conditions: they were already tenants, the head of household or spouse was living legally in the United States, and the family included only the spouse, their minor children or parents.

Residents endorsed the rule 2-to-1 in May 2007 during the nation's first public vote on a local government measure meant to combat illegal immigration.

A group of apartment complex operators, residents and advocates sued Farmers Branch, alleging the rule was so poorly drafted that it could allow exclusion of legal immigrants and citizens from renting, was difficult to abide by since it didn't provide clear guidance for apartment managers and owners and improperly tried to turn property managers into policing agents.

Lindsay then issued a preliminary injunction blocking Farmers Branch from enforcing the ordinance.

The city hired a law firm and consulted with University of Missouri-Kansas City law professor Kris Kobach to rework the ban and address the challenges to it. They came up with the latest ordinance, which council members approved in January.

It would require prospective tenants to get a rental license from the city. Farmers Branch would ask the federal government for the applicant's legal status before approving the rental license. The rule was set to take effect 15 days after a ruling on the previous ordinance.

Earlier on Wednesday, Lindsay denied Farmers Branch's request to have the revamped ordinance declared constitutional.

Lindsay wrote that federal courts do not give advisory decisions to assure governments that their statutes pass constitutional muster.

Typically challenges to the constitutionality of a local law involve a lawsuit, but no one has sued over the ordinance that has not yet taken effect, Lindsay pointed out.

“Regardless of when a plaintiff's claims would become ripe to challenge the New Ordinance, the court is troubled by what appears to be the city's desire to find an end run around the injunction and seek and advance ruling on the constitutionality of the New Ordinance,” Lindsay wrote.

Around the country, some 160 cities or counties have considered, passed or rejected similar laws, but Farmers Branch was the first in Texas, according to the Puerto Rican Legal Defense and Education Fund, which tracks the data.