In the Missouri Court of Appeals
Eastern District

DIVISION IV

ST. LOUIS ASSOCIATION OF REALTORS,	)	No. ED94475
Appellant,	)	Appeal from the Circuit Court of St. Louis County
vs.	)	Honorable Mary Elizabeth Ott
CITY OF FERGUSON,	)	
Respondent.	)	FILED: March 15, 2011

Introduction

St. Louis Association of Realtors (SLAR) appeals from the trial court's dismissal of its Petition for Declaratory Judgment challenging the constitutionality of certain portions of the City of Ferguson's Municipal Code. In its Order and Judgment dismissing the petition, the trial court determined that SLAR lacked standing to challenge the municipal ordinances that established a fee and licensing structure for residential rental property located within the Ferguson city limits. Because SLAR fails to meet the requirements to assert associational standing on behalf of its members, we affirm the trial court's Order and Judgment.

Background

SLAR filed a Petition for Declaratory Judgment (Petition) against the City of Ferguson (the City) to declare "unlawful, invalid and unenforceable" the City's annual licensing structure enacted by the City's Ordinance No. 2006-3257, as modified by Ordinance No. 2006-3270

(hereinafter referred to as the City's Licensing Program). The City's Licensing Program imposed license and fee requirements upon any owner of a residential dwelling who sought to rent or lease such dwelling, as well as discipline, suspension and revocation procedures for the licenses.

In its declaratory judgment action, SLAR alleged that the City's Licensing Program imposed financial and regulatory burdens upon the rental of residential properties that are unlawful and unauthorized by Missouri law, and that violate the Missouri Constitution and the United States Constitution. More specifically, SLAR alleged that the City's Licensing Program is not authorized by the City's charter or Missouri statute and exceeds any authority delegated to the City by the State; that the classifications of "responsible" or "provisional" as used in the City's ordinance are unconstitutionally vague and arbitrary in violation of the Due Process Clause; that the City's license fee or tax violates the Hancock Amendment; that the City has no authority to require property owners to determine if any tenant is subject to and in compliance with Section 589.40, RSMo; and that the City's Licensing Program violates Missouri law to the extent it restricts the right to post property for sale or lease.

SLAR alleges in its Petition that it "is an association of approximately 10,000 real estate professionals doing business in the St. Louis metropolitan area," and that its "membership includes members who are actively engaged in the business of owning and renting residential properties throughout St. Louis County and the surrounding area, including residential rental properties located within [the City]." SLAR claims that it has associational standing under Missouri law to file its Petition against the City on behalf of SLAR's members who own and lease residential property within the City and who are thereby subject to and directly affected by the City's Licensing Program.

Subsequently, the City filed its Answer, Affirmative Defenses and Counterclaim, arguing that SLAR lacked standing to bring its Petition. The City later filed a separate motion to dismiss the action based on SLAR's lack of standing. The parties proceeded to trial on December 17, 2008, subject to the City's motion to dismiss, which the court considered with the case.

During trial, SLAR presented evidence relating to its claims of associational standing, including excerpts from its Bylaws, requirements for membership, testimony from its governmental affairs director and testimony from three members who owned residential rental property within the City that was subject to the City's Licensing Program.

On January 10, 2010, the trial court ruled that SLAR was without standing to bring the lawsuit, and granted the City's motion to dismiss.

This appeal follows.

Point on Appeal

In its sole point on appeal, SLAR challenges the trial court's dismissal of SLAR's Petition and contends that the trial court erred in finding that SLAR lacks standing. SLAR avers that it has met all of the requirements to confer associational standing.

Standard of Review

We review a trial court's dismissal of a petition for lack of standing *de novo*. Miller v. City of Arnold, 254 S.W.3d 249, 252 (Mo. App. E.D. 2008). We will determine the issue of standing "as a matter of law on the basis of the petition, along with any other non-contested facts accepted as true by the parties at the time the motion to dismiss was argued, and resolve the issue as a matter of law on the basis of the undisputed facts." Mo. Pub. Serv. Comm'n v. ONEOK, Inc., 318 S.W.3d 134, 137 (Mo. App. W.D. 2010), quoting State ex rel. Dep't of Soc. Servs., Family Support Div., v. K.L.D., 118 S.W.3d 283, 287 (Mo. App. W.D. 2003).

Discussion

This appeal does not address the underlying substantive and constitutional issues raised by SLAR. Given the trial court's limited ruling, our review is confined to the issue of standing. Whether a plaintiff has standing to bring a lawsuit is a threshold issue. Mo. Health Care Ass'n v. Attorney Gen. of the State of Mo., 953 S.W.2d 617, 620 (Mo. banc 1997). SLAR does not claim to be affected by the City Licensing Program as SLAR does not allege ownership of residential rental property in the City. As a result, SLAR does not allege that it has individual standing to pursue its Petition. Rather, SLAR has invoked representational or associational standing on behalf of its members to legitimize its pursuit of this litigation.

When analyzing an organization's legal standing to sue on behalf of its members, Missouri courts adhere to three criteria used by the United States Supreme Court when analyzing organizational standing. Hunt v. Washington State Apple Adver. Comm'n, 432 U.S. 333, 343 (1977); Mo. Bankers Ass'n v. Dir. of Mo. Div. of Credit Unions, 126 S.W.3d 360, 363 (Mo. banc 2003). In Missouri, an entity has "associational standing" to bring a challenge on behalf of its members if: (1) its members would otherwise have standing to bring suit in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested by the organization requires the participation of individual members. Id., citing Missouri Health Care Assn. v. Attorney General of the State of Missouri, 953 S.W. 2d 617, 620 (Mo. banc 1997). An organization must meet all three factors necessary for associational standing, regardless of the nature of the claim. See Sanner v. Bd. of Trade of the City of Chicago, 62 F.3d 918, 922 (7th Cir. 1995).

The trial court found that SLAR failed to meet each of the three criteria required for associational standing. Although SLAR has contested the trial court's findings as related to all

three prongs of the associational standing test, we confine our analysis to the second prong, as we find this prong is dispositive of SLAR's appeal. Having thoroughly reviewed the record, we are unable to conclude that the interests SLAR seeks to protect with its Petition are germane to SLAR's purpose of promoting and assisting the business activities of real estate agents and their affiliates. Because SLAR's failure to meet any one of the three criteria precludes SLAR from asserting associational standing, we need not, and do not review the adequacy of the remaining two requirements.

Evidence presented by SLAR to support its claim of associational standing

As support for its claim of associational standing, SLAR avers that it seeks to protect the business and financial interests of its members owning and renting residential properties, and that this interest is germane to SLAR's purpose. SLAR argues that the preservation of its members' business opportunities and economic well-being is germane to a trade association's purposes, and confers the requisite associational standing under Missouri law. During trial, SLAR presented evidence relating to its claims of associational standing, including excerpts from its Bylaws stating the six objectives of the organization, membership requirements, and testimony from SLAR's governmental affairs director as well as three members who owned residential rental property subject to the City's Licensing Program.

The objectives set forth in SLAR's Bylaws maintain that SLAR "unite[s] those engaged in the recognized branches of the real estate profession for the purpose of exerting a beneficial influence upon the profession and related interests"; promotes and maintains high standards of conduct in the real estate profession; "provides a unified medium for real estate owners and those engaged in the real estate profession whereby their interests may be safeguarded and advanced"; "further[s] the interests of home and other real property ownership"; unites those engaged in the

real estate profession in the community with the state and national associations of realtors; and "designate[s], for the benefit of the public, individuals authorized to use the terms Realtor, Realtors, and Realtor-Associate as licensed, prescribed, and controlled by the National Association of Realtors."

Evidence was introduced at trial of SLAR's Bylaws, which described its seven classes of membership. These classes include Realtor Members and Realtor-Associate Members who are actively engaged in the real estate profession; Institute Affiliate Members who hold a professional designation awarded by an Institute, Society or Council affiliated with the National Association of Realtors that addresses a specialty area other than residential brokerage; Affiliate Members, who are real estate owners and other individuals or firms who, while not engaged in the real estate profession, have interests requiring information concerning real estate and are in sympathy with the objectives of SLAR; Public Service Members, who are interested in the real estate profession due to their employment or affiliation with educational, public utility, governmental or other similar organizations; Life Members, who are members for not less than thirty years and have served SLAR as Director, Committee Chairman or Co-Chairman for at least three years; and Appraiser-Trainee Members, individuals who are seeking licensure or certification as real estate appraisers.

Also during trial, SLAR's Governmental Affairs Director, Meggie Devereux, testified on SLAR's behalf. Devereux testified that the current lawsuit was authorized specifically by SLAR's Board of Directors, and that the issues SLAR chooses to litigate "sometimes" involve brokerage rights, but not always. Devereux also testified that SLAR adopted a "vision statement," which she read during trial: "[SLAR] strives to enhance the professionalism and success of realtors and advocates private property rights." Devereux testified that although

SLAR identified three members who had an ownership interest in rental property located within the City, SLAR does not maintain property records and "[t]here are additional members who own property in the City of Ferguson as rental property." Devereux stated that SLAR made contact with additional members who were not willing to participate in the lawsuit. Devereux acknowledged in her testimony that SLAR does not itself own any property in the City or pay any type of tax or fee to the City.

Finally, SLAR presented at trial the testimony of three members who owned residential rental property subject to the City's Licensing Program. Glen Sperry and James Crews, licensed real estate agents in Missouri, and John Williams, a licensed broker, each stated the address of the property he owns and rents in the City and that he holds a license to rent with the City.

The claims raised in the Petition are not germane to SLAR'S organizational purpose.

The "germaneness" prong of associational standing has been explained as an examination of the reasons people join an organization as an effective vehicle for vindicating interests that they share with others. Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am. v. Brock, 477 U.S. 274, 289-90 (1986). Germaneness requires "pertinence" or "a connection" but does not go so far as to require that the issue be "central" to the organization's purpose. Humane Soc'y of the U.S. v. Hodel, 840 F.2d 45, 57 (D.C. Cir. 1988).

In determining whether the interests an organization seeks to protect through litigation are germane to the organization's purpose, courts examine whether the organization's litigation goals are "pertinent to its special expertise and the grounds that bring its membership together." Id. at 56. Examining germaneness is a means of "preventing litigious organizations from forcing [ ] courts to resolve numerous issues as to which the organizations themselves enjoy little expertise and about which few of their members demonstrably care." Id. at 57.

For instance, the United States Court of Appeals for the District of Columbia found "little difficulty concluding that challenging hunting on wildlife refuges is germane to the Humane Society's purposes" because the Humane Society and its lawsuit had named their goal as "keeping animals and birds alive and well." Id. at 59.

Realty organizations have both successfully and unsuccessfully claimed associational standing on behalf of their members in Missouri courts. This Court held that the Real Estate Board of Metropolitan St. Louis had standing to challenge municipal regulations regarding the size of "for sale" signs that real estate agents could utilize within the City of Jennings in Real Estate Board of Metropolitan St. Louis v. City of Jennings, 808 S.W.2d 7 (Mo. App. E.D. 1991). In finding that the interests sought by the Real Estate Board were "germane to its purpose," this Court noted that the board's petition alleged that

> its members have been denied a reasonable opportunity to advertise properties located in Cities, have incurred additional costs and hardships in complying with the size restrictions on signs, and have suffered economic hardship as a result of Cities' ordinances. The preservation of its members' business opportunities and economic well-being are germane to Board's purpose.

Id. at 9.

This Court more recently rejected SLAR's claim of associational standing to represent its members in a challenge to sewer service charges imposed upon property owners by the Metropolitan Sewer District. SLAR claimed associational standing to represent its members in the litigation because SLAR's charter purpose was to "promote the interests of real estate dealers." Mo. Growth Ass'n v. Metropolitan St. Louis Sewer Dist., 941 S.W.2d 615, 621 (Mo. App. E.D. 1997). Holding that "the paying of sewer bills is not 'germane' to the general and vague purpose of promoting the interests of real estate dealers," we firmly rejected SLAR's claims of standing. Id.

Similarly, standing was at issue in Citizens for Safe Waste Management v. St. Louis County, where the organizational plaintiff was a non-for-profit corporation whose purpose was to promote and study environmentally safe methods of waste management, lessen dependence on landfills, and educate the public about safe waste management. 810 S.W.2d 635, 638-39 (Mo. App. E.D. 1991). Although this Court found that individual property owners living within a mile of a proposed landfill site had standing to challenge the planning commission's approval of a development plan for the proposed landfill, we held that the non-for-profit organization lacked standing. Id. at 639-40. In so holding, we concluded that the plaintiff corporation had no interest in the subject matter other than the interest of its individual members and demonstrated no "specific and direct effect on any interest sufficient to confer standing." Id. at 639. The Court explained:

> Claims of environmental damage are by their nature capable of being made by a great number of parties; it is therefore important to limit the entitlement to judicial review to those parties capable of demonstrating a direct, specific, legally cognizable interest distinct from the interests of the general public. To permit each member of the public who disagrees with a zoning decision to seek judicial review would effectively destroy the administrative zoning structure.

Id.

Although the plaintiff in Citizens for Safe Waste Management was not a trade association comprised of industry members as is SLAR, we find that factual distinction of no consequence to our analysis of the underlying principles of associational standing. The analysis utilized by this Court in Citizens for Safe Waste Management is consistent with that employed when rejecting SLAR's associational status in the Missouri Growth Association case.

SLAR avers in its Petition that protecting the business and financial interests of its members who own and rent residential properties is germane to SLAR's purpose. SLAR further contends that Missouri law recognizes the preservation of members' business opportunities and

economic well-being as germane to a trade association's purposes so as to confer associational standing. SLAR's Bylaws consistently refer to the "real estate profession" and "realtors." We do not consider these repeated references to be either inadvertent or inconsequential. Rather, we deem the repeated use of these words to be deliberate in defining the purpose for which the members of SLAR join together as an organization.

We recognize that a trade association's efforts in seeking to preserve the business opportunities and economic well-being of its members may be pertinent or connected to a trade association's purpose. However, the particular business opportunities targeted for protection must be germane to a trade association's purposes to confer associational standing. Individual members of a trade association may engage in business activities unrelated to the purpose said members were drawn together as an association, and in such cases, associational standing does not lie. The evidence before the trial court showed that SLAR has approximately 10,000 members. These members come together as real estate agents, as real estate brokers or appraisers, and even more tenuously as owners of real estate or other individuals or firms who have interests requiring information concerning real estate and are in sympathy with the objectives of SLAR. The common thread that is woven through the fabric of SLAR's membership is the shared desire to exert a beneficial influence upon the real estate profession. Although SLAR claims to assert standing on behalf of its membership, the evidence reveals that only a minutia of SLAR's membership claim constitutionally cognizable injuries related to rental property ownership in the City. We acknowledge that those few members who claim injury as a result of their personal ownership of residential rental property within the City have individual standing to pursue their claims. However, we are not persuaded that the business opportunities

of these few members in renting residential property that they individually own is pertinent to SLAR's special area of expertise or the common reason SLAR's membership bonds together.

At trial, SLAR identified three of its members who were willing to state their disagreement with the City's regulations. The record lacks evidence that those members' interests are shared by the organization as a whole. As we review SLAR's Bylaws, it is apparent that the overriding interest of the membership is to promote, safeguard and enhance the real estate profession. To the contrary, the evidence suggests that by contesting the City's Licensing Program, SLAR seeks to infuse into its organization an issue concerning a few of its members who incidentally happen to own residential rental property in the City. The record does not support a claim that these individuals' memberships with SLAR were at all based on their ownership of residential rental property within the City. In addition, we find no reference to the rental of property or ownership of rental property in SLAR's Bylaws or statement of purpose. Finally, we deem it noteworthy that the interests SLAR seeks to represent in this litigation are not realtors representing owners of residential rental property, but the interests of individual property owners, whether a member of SLAR or not. We reject SLAR'S argument that the City's Licensing Program concerns its members' daily economic interests, and is therefore "pertinent" to SLAR. To the contrary, the evidence before us shows that while the City ordinance may affect the limited economic interests of a few owners of residential rental property who may also happen to be members of SLAR, the ordinance does not impact the business opportunities or economic interests of "realtors" as defined under SLAR's Bylaws.

Although three SLAR members identified at trial seek to challenge the City' Licensing Program, we are mindful that other members of SLAR, such as residential tenants, or even real estate agents representing owners of contiguous or closely proximate properties, may be readily

affected by the value and enjoyment of a neighboring property subject to the regulations at issue here, and may favor the City's Licensing Program. The U.S. Supreme Court in Brock warned that "the litigation strategy selected by the association might reflect the views of only a bare majority – or even an influential minority – of the full membership," and the requirements of associational standing were meant to facilitate "the collective adjudication of the common rights of an association's members." 477 U.S. at 288-89.

As in Missouri Growth Association v. Metropolitan St. Louis Sewer District, we find SLAR lacks the requisite associational standing to litigate claims based upon the City's Licensing Program. Our finding that SLAR's purpose is to promote, enhance and safeguard the real estate profession is consistent with this court's previous finding that SLAR's purpose is to "promote the interests of real estate dealers." Mo. Growth Ass'n, 941 S.W.2d at 621. Unlike the challenge to the Jennings ordinance, which directly impacted the business practice of all real estate dealers and directly impacted how the real estate profession could conduct business, SLAR's challenge to the City's Licensing Program does not further its charter purpose to "promote the interests of real estate dealers" or promote, enhance or safeguard the real estate profession. SLAR's challenge to licensing requirements for residential rental property furthers the interests of a few members who incidentally own residential property, but fails to promote the shared common interests of SLAR's members. In finding that the second prong of associational standing is not met in the instant case, we adhere to the Supreme Court's admonition stated in Brock.

Perhaps recognizing the difficulty in achieving associational standing, SLAR focuses much of its argument on its stated objective of furthering "the interests of home and other real property ownership." Although contained in SLAR's Bylaws, we hold that this generalized

statement fails to demonstrate a "direct, specific, legally cognizable interest" distinct to its organization. Citizens for Safe Waste Management, 810 S.W.2d at 639. We find this broadly worded objective indistinguishable from the interests of the general public and insufficient to support a finding that SLAR's interests in this lawsuit are germane to its organizational purpose. See id. SLAR's petition avers that SLAR has a legally protectable interest in "engaging in their business of renting residential property free from the cost, regulation and constraints of an unlawful municipal ordinance" and that all owners of residential rental property within the City are being required to comply with the City's Licensing Program's requirements, under penalty of losing occupancy and rental income from all properties that the owner owns and leases within the City. While these claims validly state the interests of individual owners of residential rental property located within the City, the claims do not reflect the interests of SLAR's organizational members as a whole. SLAR is not in the business of renting residential property. Nor is there evidence in the record that SLAR's general membership is either in the business of renting residential property or representing owners of residential rental property, or that SLAR's charter purpose is to promote, enhance or safeguard the interest of renting residential property. Accordingly, we hold that SLAR's interests in challenging the City's Licensing Program are not germane to SLAR's organizational purpose, and that the trial court did not err in finding SLAR to be without standing to pursue its Petition.

Conclusion

The judgment of the trial court is affirmed.

Kurt S. Odenwald, Presiding Judge

Kenneth M. Romines, J., Dissents in separate opinion
Robert G. Wilkins, Sp. J., Concurs

In the Missouri Court of Appeals
Eastern District

DIVISION IV

ST. LOUIS ASSOCIATION OF REALTORS,	)	No. ED94475
Appellant,	)	Appeal from the Circuit Court of St. Louis County
v.	)	Cause No. 07CC-003604
	)	Honorable Mary Elizabeth Ott
CITY OF FERGUSON,	)	
Respondent.	)	Filed: March 15, 2011

DISSENT

I dissent.

The Realtors are a ten thousand member association whose members own, sell, lease, and manage real property in the St. Louis area. Three members testified at trial that they owned and managed real property in Ferguson and were directly affected by the scheme in the Ferguson ordinance.[1]

The majority finds that the Declaratory Judgment filed by the Realtors must be dismissed because of lack of standing – as the Realtor's "...interests in challenging the City's Licensing Program are not germane to SLAR's organizational purpose."

Basically, I view standing and justiciability to be simply a jurisdictional inquiry –

[1] Indeed for all we know on this record, all ten thousand Realtor members may own, sell, lease or manage real property in Ferguson.

which inquiry may well be suspect.[2]

The majority outlines a three-step inquiry in regard to standing for associations:

(1) its members would otherwise have standing to bring suit in their own right;
(2) the interests it seeks to protect are germane to the organization's purpose, and;
(3) neither the claim asserted nor the relief requested by the organization requires the participation of individual members.

The majority concedes that the Realtors meet the first and third element of their inquiry – members have standing, and the relief requested does not require individual participation. Of course, the majority must concede these two points as three members testified they were directly affected, and the Realtors prospectively seek to strike down the entire Ferguson scheme on state Constitutional power grounds. None of the Realtors have received violation notices, fines or penalties, nor has the City sought a nuisance designation, yet.[3]

The majority, with Socratic irony, relies on eight cases to reach its "germaneness" conclusion. Quite the opposite of the majority's conclusion, the sum of these cases persuades me that standing is compelled.

The first case relied on by the majority involved an organization of long-term care facilities seeking to strike down an unlawful trade provision of a newly passed statue.[4] The entirety of the Missouri Supreme Court's discussion of standing is spent analyzing the first prong, member standing. Once determining the organization has satisfied the member standing requirement, the Court finds standing, and assures "germaneness".[5]

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[2] J.C.W. ex rel. Webb v. Wyciskalla, 275 S.W.3d 249 (Mo. banc 2009).
[3] Ordinance attached as Ex. A.
[4] Mo. Health Care Ass'n v. Attorney Gen. of the State of Mo., 953 S.W.2d 617 (Mo. banc 1997).
[5] Id. At 622.

The majority then relies on a U.S. Supreme Court case dealing with apples.[6] In this case the Washington State Apple Advertising Commission sought a Declaratory Judgment that a North Carolina statute was unconstitutional for prohibiting a display of Washington apple grades on boxes shipped into North Carolina. In responding to a similar standing argument as is advanced in this case, that no interest of the Realtors is specifically or directly impacted by the Ferguson ordinance, the U.S. Supreme Court found standing – even though the Apple Commission was not a voluntary organization or trade association, and included no members at all. In finding standing, the Supreme Court said at 432 U.S. 343:

> If the Commission were a voluntary membership organization a typical trade association its standing to bring this action as the representative of its constituents would be clear under prior decisions of this Court.

Next the majority cites Mo. Bankers Ass'n v. Dir. of Mo. Div. of Credit Unions, 126 S.W.3d 360 (Mo. banc 2003). This case of our Missouri Supreme Court found that the Bankers Association had standing to appeal a decision of the Credit Union Commission and specifically found as to the "associational standing" issue at l.c. 363:

> The first requirement is met because, as will be discussed in part III, Century and the other member banks in the 417 area code all have standing to bring their own claims. The second requirement is met because one of MBA's purposes in representing the interests of its 88 member banks in the 417 area code is to protect those banks from unfair competitive forces. The third requirement is met because the relief requested-the reversal of the Director's decision and invalidation of the Commission's regulation-is prospective only, and no request was made for money damages or some other relief that is specific to individual members.

None of these cases give support to the majority's conclusion. Indeed the cited cases seem, to the contrary, to compel standing on our facts.

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[6] Hunt v. Washington State Apple Advertising Com'n, 432 U.S. 333 (1977).

Sanner v. Board of Trade of City of Chicago, 62 F.3d 918, 922, did indeed deny associational standing to the American Agricultural Movement which sought anti-trust relief, including damages, for its member soy-bean growers. As the Seventh Circuit notes – and what is true in all the federal cases:

> Under Article III of the Constitution, a party must demonstrate standing in order to satisfy the "case or controversy" requirement necessary to the exercise of our judicial power.

The Court then sets out the three part test as is set out by the majority in this case. (Obviously, this Court is not concerned with the Article III case or controversy issues as was the Seventh Circuit). In resolving the standing issue, the Seventh Circuit based its denial of standing solely on the third element of the test; that the AAM lacked standing because damages were sought, as opposed to prospective injunctive relief. This case is likewise not authority for the conclusion reached by the majority.

Contrary to the majority's analysis, I likewise find International Union, United Auto., Aerospace and Agr. Implement Workers of America v. Brock, 477 U.S. 274, as authority for standing in the instant case. At issue before the U.S. Supreme Court in Int'l Union was a Department of Labor policy which dealt with the manner in which certain state unemployment benefits were to be calculated. In granting standing, and finding germaneness, the Court said:

> While a class action creates an ad hoc union of injured plaintiffs who may be linked only by their common claims, an association suing to vindicate its members' interests can draw upon a pre-existing reservoir of expertise and capital... l.c. 275.

Additionally, in reliance on Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, the Court states what I believe to be the correct manner in which to review the "germaneness" issue:

> The only practical judicial policy when people pool their capital, their interests, or their activities under a name and form that will identify collective interests, often is to permit the association or corporation in a single case to vindicate the interests of all. l.c. 290.

The majority then moves to the "...keeping animals and birds alive and well..." case – Humane Soc. of the U.S. v. Hodel, 840 F.2d 45 (D.C. Cir. 1988). Again, as opposed to supporting the majority's denial, Hodel compels standing for the Realtors. In Hodel, the national Humane Society sought Declaratory Judgment seeking to enjoin hunting on national wildlife refuges. The Court of Appeals for the District of Columbia, after extensively dealing with "germaneness," granted standing and in doing so set out, again, what I believe to be the proper inquiry. In discussing UAW, the Hodel Court said:

> Thus, in its rationale, UAW suggests that it is highly unlikely the second prong of germaneness was meant to set the narrow perimeter of centrality of purpose urged here. Rather, it would seem to require only that an organization's litigation goals be pertinent to its special expertise and the grounds that bring its membership together. l.c. 56 (emphasis added).

> Case law from numerous jurisdictions on various points of law that rely on the concept of germaneness also consistently regards the term as mandating pertinence or connection, but not a substantial overlap, between the two objects or ideas being compared. None of these cases to the best of our knowledge has construed "germane" to mean "central" or to require more than pertinence between the object and the referent. l.c. 56-57.

> It remains only to note that in thus characterizing the germaneness requirement as mandating mere pertinence between litigation subject and organizational purpose, we join a number of other courts which, without any detailed analysis of prong two, have declared it undemanding. l.c. 58.

In my opinion, careful reading of these cases results in the conclusion that the Realtors have standing. Obviously, the issue of concern in the litigation – a broad sweeping ordinance concerning the Realtors' daily economic interests – is "pertinent" to the Realtors. I do not find the Realtors engaging in some Quixotic Pollyanna quest nor indeed are the Realtors gadflies – there is more here than "mere pertinence" in the

Realtors' position. None of the cases discussed are authority for the broad conclusion of the majority. These cases clearly compel standing.

The majority ends its cases analysis with Real Estate Bd. of Metropolitan St. Louis v. City of Jennings, 808 S.W.2d 7 (Mo. App. E.D. 1991), and Mo. Growth Ass'n v. Metro. St. Louis Sewer Dist., 941 S.W.2d 615 (Mo. App. E.D. 1997), stating, "...Realty organizations have both successful and unsuccessfully claimed associational standing on behalf of their members in Missouri courts."

Real Estate Bd. of Metropolitan St. Louis v. City of Jennings, supra, dealt with the size of "For Sale" signs. We granted standing.

In regard to Mo. Growth Ass'n v. Metro. St. Louis Sewer Dist., supra, we are told this Court "...firmly rejected SLAR's claim of standing." At issue in Mo. Growth was the fee for waste water services. In this Hancock Amendment case, the plaintiffs advanced the argument that MSD could not increase sewer charges without an election.

What this Court said in Mo. Growth is:

> SLAR is a not-for-profit organization located in St. Louis County. It owns two for-profit corporations, one of which is in the county and owns real estate in the county. However, at trial, SLAR's executive vice-president testified he was not sure which corporation owns the county real estate and therefore, which corporation pays MSD wastewater user charges. Thus, based on the record, SLAR did not meet its burden of proving it paid sewer charges. Consequently, it did not meet its burden in proving it had standing in its own right to bring this suit. Therefore, the trial court did not err in finding SLAR lacks standing. l.c. 621.

Thus individual standing was denied for lack of proof of real property ownership.

This Court further said in Mo. Growth:

> Applying the Hunt factors to determine the organizational standing of MGA, SLAR, and CAI-StL, we hold that none of these organizations have standing to bring suit. MGA fulfills the first factor of the Hunt test because it is a not-for-profit trade association which represents the interests of sixty corporate

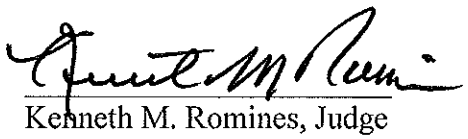
members, some of which pay taxes and sewer bills.

...

> The charter purpose of SLAR is to promote the interests of real estate dealers. Because these real estate dealers do not pay their own sewer bills, they would not have standing to bring this suit. Therefore, SLAR does not have standing on their behalf. Furthermore, the paying of sewer bills is not "germane" to the general and vague purpose of promoting the interests of real estate dealers. Thus, SLAR does not have standing to bring this suit. l.c. 621.

Thus standing was denied because this Court found that the individual members "do not pay their own sewer bills...and thus fail in the first prong inquiry." The Court further found that "...the paying of sewer bills is not germane to..." the Realtors' general interest. This then is the only discussion in all the cases that does not find standing. It seems utterly reasonable to me that the sewer tax bills of someone else are none of the Realtors' business. Contradistinguished are the facts in our case – a broad ordinance scheme which seeks to control, mandate, and regulate real property in Ferguson to the economic detriment of the membership of the Realtors.

The germaneness requirement is meant to be a low bar to access to the courtroom. As long as the interest to be protected is at least moderately pertinent to the purpose of the organization and not common to all taxpayers, the second prong should not be an impediment to standing. I believe this case should be reversed and remanded for trial. The Board of Realtors should decide what is in their membership's economic self-interest, not this Court. Consistent with Rule 83.03 I find that the opinion is contrary to prior opinions of the Missouri Supreme Court and the case should be transferred to the Missouri Supreme Court.



Kenneth M. Romines, Judge

Bill No. 6731 Ordinance No. 2006-3257

Introduced by Council as a Whole

AN ORDINANCE ENACTING SEVERAL NEW SECTIONS IN ARTICLE VII OF TITLE 7 OF THE MUNICIPAL CODE RELATING TO MINIMUM HOUSING STANDARDS AND RENUMBERING CERTAIN DIVISIONS WITHIN SAID ARTICLE; AMENDING SECTIONS 42-57 THROUGH 42-62 OF DIVISION 4 OF ARTICLE II OF TITLE 42 OF THE MUNICIPAL CODE RELATING TO LICENSES AND FEES FOR THE CONDUCT OF THE BUSINESS OF RENTING RESIDENTIAL REAL ESTATE; AND ENACTING A NEW TITLE 25 CONSISTING OF SEVERAL NEW SECTIONS RELATING TO SPECIAL LICENSING PROVISIONS FOR RESIDENTIAL RENTAL REAL ESTATE LICENSES

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FERGUSON, MISSOURI, AS FOLLOWS:

* * * *

SECTION 1. Division 1 "Exterior Appearance", Division 2 "Minimum Space Requirements" and Division 3 "Vacant Registration Structures" all contained within Article VII of Title 7 of the Municipal Code are hereby renumbered as follows in order to allow for the enactment of a new Division 1:

TITLE 7 BUILDINGS AND BUILDING REGULATIONS

ARTICLE VII EXISTING RESIDENTIAL BUILDINGS

DIVISION II EXTERIOR APPEARANCE

[consisting of Sections 7-131 through 7-144]

DIVISION III MINIMUM SPACE REQUIREMENTS

[consisting of Sections 7-145 through 7-145.7]

DIVISION IV VACANT RESIDENTIAL STRUCTURES

[consisting of Section 7-145.21 through 7-145.25]

* * * *

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EXHIBIT A

SECTION 2. Article VII of Title 7 of the Municipal Code is hereby amended by the addition of a new Division 1 and several new sections thereunder to read as follows:

TITLE 7 BUILDINGS AND BUILDING REGULATIONS

ARTICLE VII EXISTING RESIDENTIAL BUILDINGS

DIVISION I MINIMUM HOUSING STANDARDS

Sec. 7-120 Minimum Standards for Dwellings and Dwelling Units

A. Foundation, Exterior Walls and Roofs. The foundation, exterior walls and roof shall be substantially watertight, weather-tight, and protected against rodents and shall be kept in sound condition and repair. The foundation elements shall adequately support the building at all points. Every exterior wall shall be maintained in a sound condition or repair and shall be free of any other condition which admits rain or dampness to the interior portions of the building. All exterior surface material must be treated, painted in a workmanlike manner, or otherwise maintained in a sound condition. Roof drainage shall be adequate to prevent rain water from causing dampness in the walls. Roof of all buildings shall be either of tile, of slate or of built-up, fire-proof, sealed-down shingles which are rated Class "A" with a twenty-five (25) year guarantee. All cornices, rustications, quoins, moldings, belt courses, lintels, sills, oriel windows, pediments, gutters and similar projections shall be kept in good repair and free from defects which make them hazardous and dangerous.

B. Floors, Interior Walls and Ceilings. Every floor, interior wall, and ceiling shall be adequately protected against the passage and harborage of vermin and rodents, and every floor, interior wall, ceiling and air infiltration shall be kept in sound condition and good repair. Every floor shall be securely attached and free of tears, trip hazards, and loose, warped, protruding or rotting floor boards. Every interior wall and ceiling shall be free of large cracks and holes, and shall be free of loose plaster or other structural or surface materials. Every toilet room and bathroom floor surface shall be substantially impervious to water and be capable of being maintained easily in a clean and sanitary condition. Toxic paint and materials shall not be used where readily accessible to children.

C. Windows, Doors, and Hatchways. Every window, exterior door, and basement hatchway shall be substantially tight, and shall be kept in sound condition and repair. Every window shall be fully supplied with window panes which are without cracks or holes. Every window sash shall be in good condition and fit reasonably tight within its frame. Every window, other than a fixed window, shall be capable of being easily opened and shall be held in position by window hardware. Every exterior door, door hinge, and door latch shall be in good condition. The lowest level of every exterior doorway shall be no more than ten (10) inches from the level of the adjoining ground or no more than ten (10) inches from the first tread of an adjoining stairway which shall provide direct access to ground level. Every exterior door, when closed, shall fit reasonably well within its frame. Every window, door and frame shall be constructed and

maintained in such relation to the adjacent wall construction as to completely exclude rain, and substantially to exclude wind from entering the dwelling. Every basement hatchway and window shall be so constructed, screened or maintained as to prevent the entrance of rodents, rain, and surface drainage water into the building.

D. Exterior Appurtenances. Exterior appurtenances including but not limited to screens, awnings, trellises, antennae, cable or satellite dish, storm windows and storm doors shall be installed in a safe and secure manner and shall be maintained in sound condition.

E. Stairway and Porches. Every stairway, inside or outside of the dwelling, and every porch, shall be kept in safe condition and sound repair. Every flight of stairs and every porch floor shall be free of deterioration. Every stairwell and every flight of stairs which is more than four (4) risers high shall have a rail not less than two and one-half (2½) feet high, measured vertically from the nose of the tread to the top of the rail; and every porch which is more than four (4) risers high shall have a rail not less than two and one-half (2½) feet above the floor of the porch. Every rail and balustrade shall be firmly fastened and maintained in good condition. No flight of stairs shall have settled more than one (1) inch out of its intended position or have pulled away from supporting or adjacent structures. No flight of stairs shall have rotting, loose, or deteriorating supports. The treads and risers of every flight of stairs shall be uniform in width and height. Every stair tread shall be strong enough to bear a concentrated load of at least four hundred (400) pounds. All stairways used for egress shall have a minimum of 6'4" height clearance. Every porch shall have a sound floor. No porch shall have rotting, loose, or deteriorating supports.

F. Basements and Garden Levels. Every basement and garden level shall be maintained in a safe and sanitary condition. Water shall not be permitted to accumulate or stand on the floor. All sewer conditions shall be properly trapped. All slab drains shall be covered with grating. Junk, rubbish and waste shall not be permitted to accumulate to such an extent as to create fire hazard, to be a nuisance or to endanger health or safety.

G. Facilities, Equipment and Chimneys. Every supplied facility, fixture, system, piece of equipment or utility, and every chimney flue shall be maintained in a safe, sound and sanitary working condition.

H. Driveways. Driveways shall be paved and maintained in good repair free of safety hazards.

I. Yards. All areas which are not covered by lawn or vegetation shall be treated to prevent dust or the blowing or scattering of dust particles into the air. All trees, bushes or vegetation which overhang a public thoroughfare shall be properly trimmed to avoid obstruction of the view and movements of vehicles and pedestrians. Hazardous dead trees and shrubs shall be promptly removed.

J. Infestation. Each dwelling and all exterior appurtenances on the premises shall be adequately protected against insects, rats, mice, termites, and other vermin infestation. Building defects which permit the entrance of insects, rats, mice, termites, and other vermin shall be corrected.

K. Egress. Every dwelling unit shall have a safe and unobstructed means of egress leading to a safe, open space outside at the ground level. Passage through such exits shall not lead through any other dwelling unit. The main means of egress from each inhabitable room shall be a minimum of 6'4" in height for adequate clearance. Dwellings with two or more inhabitable floors shall require two means of egress. An inhabitable basement shall require two means of egress – one being the entry door and the other being any window with unobstructed access with a minimum dimension of 30" x 40" with a finished sill height of no more than 44" above the floor.Every door available as an exit shall be capable of being opened from the inside easily and without the use of a key.

Sec. 7-121 Illumination

A. Public Halls. All habitable rooms, passageways and stairways shall be provided with electrical fixtures so that they can be adequately lighted at night. A minimum of five (5) foot candles of daylight or artificial illumination shall be required at all times in all public halls.

B. Natural Lighting. All habitable rooms shall be provided with a means of transmitting natural light from outside with the following requirements:

1. Window area. Every habitable room shall have at least one window or skylight of approved size facing directly to the outdoors except in kitchens where artificial light may be provided in accordance with the provisions of the Building Code. The minimum total window area, measured between stops, for every habitable room shall be at least five percent (5%) of the floor area of such room, and not less than five (5) square feet. Whenever walls or other portions of a structure face a window or any room and such obstructions are located less than five (5) feet from the window and extend to a level above that of the ceiling of the room, such a window shall not be deemed to face directly to the outdoors and shall not be included as contributing to the required minimum total window area for the room.

2. Windows leading to porches. Whenever the natural light area opening from a habitable room is to be an enclosed porch, such area shall not be counted as a required light area unless the enclosed porch has a natural light area of at least thirty percent (30%) of the floor area of the room in question.

Sec. 7-122 Electrical Service

A. Generally. All dwellings and dwelling units shall be adequately and safely provided with an electrical system in compliance with the requirements of the Electrical Code and providing a minimum service requirement of 100 AMP / 240 Volts.

B. Deficient Electrical System. An electrical system shall be considered deficient or hazardous for the following reasons: inadequate service, improper fusing, improper or inadequate grounding of the system, insufficient outlets, improper wiring or installation, deterioration or damage, flush or semi-flush mounted floor convenience outlets without an approved water-proof cover, extension cords for other than short term, temporary use, conductor supported pendant switches or conductor supported light fixtures, loose or hanging wires, frayed or bare wires, grounded-type convenience outlets that are inadequately grounded, and for other reasons based on accepted engineering practice standards.

C. Minimum Requirements. The following shall be considered as absolute minimum requirements: (conditions such as size of the dwelling unit and usage of appliances and equipment within the unit shall be used as the basis for requiring additional electrical works)

1. Number of Electrical Outlets. Every habitable room shall contain one electrical outlet for every 20 linear feet of wall. Every kitchen shall be provided with at least three (3) separate and remote wall-type electric convenience outlets one (1) of which may be a ceiling or wall-type electric light fixture. Every laundry area and bathroom shall contain at least one (1) grounded-type convenience outlet.

2. Good Working Order. Every outlet and fixture shall be properly installed, shall be maintained in good and safe working condition, and shall be connected to the source of electric power in a safe manner.

Sec. 7-123 Water Facilities

A. Bathrooms. Every dwelling unit shall contain a room which affords privacy to a person within said room and which is equipped with a flush water closet, lavatory basin and bathtub or shower, all of which are in good working condition and are properly connected to hot and cold water lines and to an approved water and sewer system.

B. Kitchen sink. Every dwelling unit shall contain a kitchen sink, trap and faucet apart from the lavatory basin required which is in good repair, and in working condition, properly connected to hot and cold water lines and to an approved water and sewer system.

C. Water heating facilities. Every dwelling unit shall have supplied water heating facilities which are properly installed and are maintained in safe and good working

condition, capable of heating water to a temperature as to permit an adequate amount of water to be drawn at every required kitchen sink, lavatory basin, bathtub or shower at a temperature of not less than one hundred twenty degrees (120°F).

D. Plumbing fixtures. Every dwelling or dwelling unit shall have water lines, plumbing fixtures, vents, and drains which are properly installed, connected and maintained in working order and shall be kept free from obstructions, leaks and defects and be capable of performing the function for which they are designed.

Sec. 7-124 Heating Facilities

A. Every dwelling or dwelling unit shall have heating facilities which are capable of safely and adequately heating all habitable rooms, bathrooms, and water closet compartments within its walls to a temperature of at least seventy degrees (70°F) when the outside temperature is ten degrees below zero (-10°F), and a temperature of at least sixty degrees (60°F) when the outside temperature is less than ten degrees below zero (-10°F).

B. Prohibited Equipment. Gas appliances designed primarily for cooking or water heating purposes shall not be considered as heating facilities within the meaning of this Section. Portable heating equipment employing a flame and the use of liquid fuels or coal is prohibited.

C. Good Working Condition. All heating facilities shall be properly installed, safely maintained and in good working condition.

D. Prohibited Fuel. The following fuels may not be used as a fuel for use in appliances for heating, cooking, refrigeration, or water heating: liquified petroleum gas "LP gas" and "LPG", propane propylene, butane, iso-butane, butylene gasoline or kerosene.

Sec. 7-125 Ventilation

A. Every habitable room shall have natural ventilation or a mechanical ventilation system adequate for the purpose for which the room is used.

B. Toilet Rooms, Bathrooms, and Kitchens. Every toilet room, bathroom and kitchen shall have adequate ventilation which may be either an openable window with an openable area of five percent (5%) of the floor area, mechanical ventilation, or a gravity vent flue constructed with incombustible material leading to the roof of the building or a combination of any of these. The gravity vent shall be computed at an aggregate clear area of not less than five percent (5%) of the floor area of the room with a minimum area of at least one hundred twenty (120) square inches. Gravity vents shall be provided with a weather cap, directional vane or rotary type ventilation on the roof. Adequate ventilation shall be deemed to a system maintained in a safe and good working condition

which provides a complete change of air for the bathroom or water closet compartment every fifteen (15) minutes.

Sec. 7-126 Accessory Structures

Obstruction or Disrepair Not Permitted. Accessory structures (including, but not limited to porches, terraces, entrance platforms, garages, driveways, carports, walls, fences, and miscellaneous sheds) shall not obstruct light and air of doors and windows of any dwelling unit, or obstruct a safe means of access to any dwelling unit or create fire and safety hazards or provide rat or vermin harborage. Accessory structures shall be functional and shall be maintained in a state of good repair and alignment. All structures must have vermin-proof floors.

* * * *

SECTION 3. Sections 42-57 through 42-62 of Title 42 of the Code of Ordinances of the City of Ferguson are hereby amended to read as follows:

TITLE 42 TAXATION

ARTICLE II OCCUPATIONAL LICENSE TAXES

DIVISION 4 RESIDENTIAL RENTAL REAL ESTATE

[Sec. 42-56 Definitions (This section is not amended and remains in full force and effect)]

Sec. 42-57 License required

No person shall permit the offer for rent, lease, or occupancy any residential rental property to any person(s) who are not the owners of record within the City without a license issued pursuant to the licensing provisions of Title 25 of this Code.

No person shall permit the continued occupancy of any residential rental property to any person(s) who are not the owners of record within the City without maintaining a responsible or provisional license issued pursuant to the licensing provisions of Title 25 of this Code.

Sec. 42-58 License application

Application for a license, renewal of a license, reinstatement of a license or for change in the license classification shall be made in accordance with the requirments of Title 25 of this Code.

Sec. 42-59 Fee.

The annual fee for the different classifications of license required for the rental of residential real estate within the City shall be as set forth in the Schedule of Fees determined by the City Council.

Section 42-60 Occupancy Prohibited.

No license shall be issued except in accordance with the provisions of Title 25 of this Code and unless and until all fees due hereunder, including any fines, delinquency penalties or other charges imposed pursuant to Title 25 of this Code, are paid in full. No occupancy permit shall be issued for the occupancy of any residential rental property without the appropriate license for such rental.

Sec. 42-61 Revocation or Suspension of residential real estate license.

(a) In addition to the grounds for revocation or suspension of a residential real estate license set forth in Title 25 of this Code, in the event any subscriber, owner or occupant is more than ninety (90) days delinquent in the payment of any charges pursuant to Article IV of chapter 37 of this Code, or if there is a delinquency in any taxes, license fees or other amounts due the city which shall include, but not be limited to, assessments for nuisance abatement, weed cutting and boarding up of propertyies which are incurred after the effective date of this ordinance, then any residential rental license issued to the owner shall be revoked in accordance with the provisions of Title 25 of this Code.

(b) It shall be unlawful for the owner or subscriber to continue to lease or accept rental payments for premises when a residential rental real estate license has been suspended or revoked.

(c) It shall be unlawful for any occupant to continue to inhabit or pay rent for premises for which a residential rental real estate license has been suspended or revoked.

Sec. 42-62 Penalty

A person convicted of any violation of sections 42-56 through 42-61 shall be punished in accordance with section 1-15, general penalty provisions, of the Municipal Code of the City of Ferguson.

* * * *

SECTION 4. The Municipal Code of the City of Ferguson is hereby amended by the addition of a new Title 25 consisting of several new sections to provide as follows:

TITLE 25 LICENSING

ARTICLE I GENERAL PROVISIONS

Sec. 25-1 Purpose

The purpose of this Title is to supplement general licensing requirements found throughout this Code with special provisions particular to a specific license.

Section 25-2 through Section 25-14 Reserved.

ARTICLE II RESIDENTIAL RENTAL REAL ESTATE LICENSING

Sec. 25-15 Definitions

As used in this Chapter, the following terms shall be defined as follows:

Dwelling: a building or portion thereof designated or used exclusively for residential occupancy, but not including trailers, mobile homes, hotels, motels, boardinghouses, fraternities, sororities or tourist homes.

Dwelling, duplex: A building designated for or occupied by two (2) families with the individual units adjacent to one another as opposed to one above the other.

Dwelling, multiple: A building or portion thereof designated for or occupied by three (3) or more families.

Dwelling, single-family: A building designed for or occupied exclusively by one (1) family.

Dwelling, two-family: A building designed for or occupied exclusively by two (2) families.

Dwelling unit: A room or suite of rooms used as a single-family dwelling including bath and culinary accommodations.

Owner: The owner of record of residential rental property, whether an individual(s), trust, partnership or corporation.

Related Person or Entity:

a) A firm, partnership, joint venture, association, organization, or entity of any kind in which the applicant holds any stock, title, or other ownership interest of at least twenty (20) percent; or

b) A firm, partnership, joint venture, association, organization or entity of any kind which holds any stock, title, or other ownership interest in the applicant of at least twenty (20) percent; or

c) An individual, firm, partnership, joint venture, association, organization or entity of any kind who affairs the applicant has the legal or practical ability to direct, either directly or indirectly, whether by contractual agreement, majority ownership interest, any lessor ownership interest, familial relationship or in any other manner.

Residential rental property: duplex dwelling, multiple dwellings, single-family dwellings and two-family dwelling occupied by, or offered for rent, lease, or occupancy, to any person(s) who otherwise qualify for an occupancy permit, who are not the owners of record of said property.

Sec. 25-16 Application for License

Every owner of residential rental property shall apply for and obtain a license prior to engaging in the business of renting or leasing a particular dwelling or dwelling unit. Application for such license shall be made on forms approved by the City and shall be completed in full.

Sec. 25-17 Multiple Properties / Dwelling Units

Any owner who owns more than one dwelling or dwelling unit may apply for a license which allows the rent or lease of more than one dwelling or dwelling unit provided, however, that each individual dwelling or dwelling unit complies with the inspection requirements and other requirements of this Code.

Related persons or entities, as defined herein, shall be considered to be one owner for purposes of this license and all dwellings or dwelling units shall be considered with regard to the licensing requirements of such owner.

Sec. 25-18 Requirement for Local Manager/Contact/Maintenance Provider

Every licensee shall hire and maintain a local manager for each dwelling or dwelling units. Each such manager must reside within 25 miles of the residential rental property that he or she manages. The manager's name, address, phone number and emergency contact number shall be provided to the City as part of the application for license.

Sec. 25-19 Classifications of Licenses

There shall be two classifications of licenses which allow the licensee to engage in the business of renting and leasing residential rental property. Those classifications are:

"Responsible" Classification: An annual license granted to owners who have met all of the requirements for such license, have maintained their residential rental property in good condition and free of nuisances as described in this Chapter.

"Provisional" Classification: An annual license granted to owners who may not meet all of the requirements for a "responsible" classification, who, because of nuisance or property maintenance problems, may require additional monitoring or inspections, or who, because of the actions or conduct by the tenants, may cause a nuisance to exist.

Sec. 25-20 Qualifications for License / Issuance of License

A. The term of each license issued pursuant to this Article shall be one year from June 1 to May 31.

B. Application for such license or for renewal of a license shall be made by March 30 of the year preceding the license or renewal term.

C. Prior to issuance or renewal of a "Responsible Classification" License or the renewal of such license, the owner must show:

1. A lease agreement between Owner and Tenants which specifically sets forth the number of persons and the names of those persons allowed to reside in the particular dwelling or dwelling unit.

2. An affidavit by the owner stating whether any tenant over the age of eighteen years is registered as a sex offender pursuant to the laws of any State or should be registered as a sex offender pursuant to the laws of any State. If any such tenant is or should be registered as a sex offender, Owner shall also state that the property on which the particular dwelling or dwelling unit is located meets the distance requirements set forth in Section 566.147 R.S.Mo. (as such distances are measured from lot line of the residential rental property to the lot line of the property used for one of the purposes protected by Section 566.147).

3. Payment of the required license fee.

D. Prior to issuance or renewal of a "Provisional Classification" License or the renewal of such license, the owner must show:

1. An inspection report completed by a certified ASHII inspector within the past year for the particular dwelling or dwelling unit and showing that the dwelling or dwelling unit meets the minimum livability standards as set forth in Title 7 of this Code.

2. An exterior inspection report completed by the City within the past year for the particular dwelling or dwelling unit and showing that the dwelling or dwelling unit meets the minimum exterior standards as set forth in Title 7 of this Code.

3. A lease agreement between Owner and Tenants which specifically sets forth the number of persons and the names of those persons allowed to reside in the particular dwelling or dwelling unit.

4. An affidavit by the owner stating whether any tenant over the age of eighteen years is registered as a sex offender pursuant to the law of any state or should be registered as a sex offender pursuant to the laws of any state. If any such tenant is or should be registered as a sex offender, Owner shall also state that the property on which the particular dwelling or dwelling unit is located meets the distance requirements set forth in Section 566.147 R.S.Mo. (as such distances are measured from lot line of the property to lot line of the property used for one of the purposes protected by Section 566.147).

5. Payment of the required license fee.

E. Provisional License Conditions.

Given the nature of the provisional license, the Director of Public Works may cause a provisional license to be subject to certain conditions. Licensee shall comply with all such conditions. Failure to comply with the conditions on a provisional license shall cause such license to be suspended or revoked. Conditions may include, but are not limited to: i) requirement that the Licensee perform certain repairs or other maintenance on the property; and ii) requirement that the Licensee perform a criminal background check on prospective tenants.

F. Transfer of License

No license issued under this Chapter shall be transferable or assignable except as hereinafter provided. In the event of the death of an owner/licensee, the next of kin of such deceased licensee, who shall meet the other requirements of this Chapter may make application and the for transfer of the license to permit the continued rent or leasing of the property for the period of time for which a license fee has been paid. Whenever one (1) or more members of a partnership dies or withdraws from the partnership, upon application, the license may be transferred to the remaining partner or partners originally licensed for the remainder of the period of time for which the license fee has been paid.

Sec. 25-21 Inspections Required

A. The ASHII inspection reports required by this Chapter shall be the result of a thorough inspection of the interior of the dwelling or dwelling unit including the various

systems and facilities therein. Each inspection shall be conducted by an ASHII-certified inspector which is listed on the Schedule of Inspectors kept by the City.

B. The inspection reports pertaining to the property exterior required by this Chapter shall by the result of an inspection by City personnel.

C. Each inspection report shall set forth all information and defects pertaining to the minimum livability and maintenance standards set forth in Title 7 of this Code.

Sec. 25-22 Reclassification of License by City

A. The Director of Public Works, upon his or her own motion or upon the complaint of any person, may reclassify the status of a licensee from "Responsible" to "Provisional". The grounds for such reclassification shall include:

1. Serious violations or repeated violations (whether minor or serious) of the City's property maintenance, housing and building codes so as to constitute a nuisance or a danger to the public health, safety or welfare; or

2. Unreasonable conduct by the Owner or Tenants on or about the property or immediately-surrounding areas which may, taken alone or taken with other conduct, constitutes a nuisance to neighbors or the neighborhood; or

3. Criminal conduct (either under state law or ordinance) by the Owner or Tenants on or about the property or immediately-surrounding areas; or

4. Repeated violations of the requirements for occupancy of residential structures; or

5. False statements made in the application for license or any required inspection report; or

6. Failure to pay appropriate fees and/or fines for violations.

B. Before reclassifying the license status of an Owner, the Director of the Department of Public Works shall give at least ten (10) days written notice of the grounds for reclassification and the date and time fixed for a hearing. The written notice shall be served on either the Licensee or the Local Manager and may be served by personal service, facsimile or regular mail.

C. At such hearing, the Licensee shall have the right to be represented by counsel and to produce witnesses in its behalf.

D. In reclassifying the license, it shall be necessary for the City Manager to find that there is competent evidence proving the stated grounds for reclassification. The City Manager shall issue his or her written decision within ten (10) days of the hearing.

E. Within five (5) days of the City Manager's decision, the Licensee may appeal the decision to the City Council. The City Council may affirm or reverse the City Manager's decision without hearing or may hold a hearing and take additional evidence. Appeal from a decision of the City Council may be taken as provided by the Revised Statutes of Missouri.

Sec. 25-23 Suspension / Revocation

A. The City Manager, upon his or her own motion, upon the recommendation of the Director of the Department of Public Works or upon the complaint of any person, may revoke or suspend for such time as the City Manager may deem necessary and property a license issued pursuant to this Chapter. The grounds for suspension or revocation shall include:

1. Repeated serious violations of the City's property maintenance, housing and building codes so as to constitute a nuisance or a danger to the public health, safety or welfare; or

2. Outrageous conduct by the Owner or Tenants on or about the property or immediately-surrounding areas which may, taken alone or taken with other conduct, constitutes a nuisance to neighbors or the neighborhood or a danger to the public health, safety or welfare; or

3. More than one incident involving criminal conduct (either under state law or ordinance) by the Owner or Tenants on or about the property or immediately-surrounding areas; or

4. Repeated violations of the requirements for occupancy of residential structures; or

5. False statements made in the application for license or any required inspection report about any matter which affects the eligibility for such license; or

6. Failure to pay appropriate fees and/or fines for violations; or

7. Failure to comply with conditions of a provisional license.

B. Before suspending or revoking the license of an Owner, the City Manager shall give at least ten (10) days written notice of the grounds for such suspension or revocation and the date and time fixed for a hearing. The written notice shall be served on either the Licensee or the Local Manager and may be served by personal service, facsimile or regular mail.

In addition, notice of revocation of the tenant's occupancy permit shall be mailed to the tenant or posted on the property giving the same date and time fixed for hearing.

C. The hearing on the suspension or revocation of Owner's license and the hearing on the revocation of Tenant's occupancy permit shall be heard as one matter. At such hearing, the Licensee and Tenant shall have the right to be represented by counsel and to produce witnesses on their behalf.

D. In suspending or revoking the license, it shall be necessary for the City Manager to find that there is competent evidence proving the stated grounds for suspension or revocation. The City Manager shall issue his or her written decision within ten (10) days of the hearing.

E. Within five (5) days of the City Manager's decision, the Licensee or Tenant may appeal the decision to the City Council. The City Council may affirm or reverse the City Manager's decision without hearing or may hold a hearing and take additional evidence. Appeal from a decision of the City Council may be taken as provided by the Revised Statutes of Missouri.

F. During the pendency of the hearing before the City Manager and/or City Council, the property may be occupied by tenants. However, immediately following a final decision by the City Manager or the City Council, if an appeal is taken to the Council, that upholds the original decision, the residential rental property that was the subject of the hearing shall be vacated. Continued occupancy shall subject both the owner and the tenants to penalties as provided for under this Code. In addition, considering the extent of the violations and other properties owned by the Licensee that are in violation, the City may take appropriate action to vacate any or all other residential rental properties owned by the Licensee.

Sec. 25-24 City's remedies not limited

Nothing in this Chapter shall be construed as limiting or restricting the City's remedies in enforcement of its ordinances. In addition to the remedies and penalties provided for in this Chapter, the City may apply to a court of competent jurisdiction for such legal or equitable relief as may be necessary in the pursuit of compliance with this Code.

Nothing in this Chapter nor the issuance or discipline of a permit shall be construed to limit or waive the City's right to seek closure of a residential structure for up to one year pursuant to Title 29 of this Code.

Sec. 25-25 Application for Renewal by owner

Every owner of residential rental property shall apply for and obtain a renewal prior to the expiration of any license allowing the Owner to engage in the business of renting or leasing of residential rental property. Application for such renewal shall be

made on forms approved by the City and shall be completed in full. Applicant shall provide the same documentation and information as required for an original application.

Sec. 25-26 Application for Reinstatement by owner

Any owner who has had a license suspended or revoked may apply for reinstatement of the license (provisional classification only). Application for reinstatement may not be filed within the first six (6) months following suspension or revocation. Application for reinstatement shall be made on forms approved by the City and shall be completed in full. In addition to the documentation and information required for an original application, the applicant shall also provide an ASHII inspection report dated within two (2) months prior to the application, narrative statement detailing how the concerns which gave rise to the suspension or revocation have been remedied, and any other information requested by the City.

Sec. 25- 27 Application for Change of Classification by owner

Any owner who has been issued a provisional license, may apply for a change of classification to a responsible license. Such application shall not be made more than once per year. Application for a change in classification shall be made on forms approved by the City and shall be completed in full. In addition to the documentation and information required for an original application, the applicant shall also provide an ASHII inspection report dated within two (2) months prior to the application, a narrative statement detailing how the concerns which gave rise to the provisional classification have been remedied, and any other information requested by the City.

* * * *

SECTION 5. Severability Clause. It is hereby declared to be the intention of the City Council that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the City Council intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect.

* * * *

SECTION 6. This Ordinance shall be in full force and effect from and after the date of its passage and approval.

1st reading: January 10, 2006

2nd reading: January 24, 2006

PASSED AND APPROVED THIS 24th DAY OF January, 2006.

Brian P. Fletcher, Mayor

Attest:

City Clerk

PERMANENTLY RECORDED IN BOOK ____, ON PAGE ____.

LICENSE #____________

CITY OF FERGUSON
110 CHURCH STREET
FERGUSON, MO 63135
(314) 524-5254
FAX (314) 524-3197

APPLICATION FOR RESIDENTIAL RENTAL REAL ESTATE LICENSE
(A PICTURE I D/DRIVERS LICENSE REQUIRED FOR PROCESSING)
($20.00 PER PROPERTY)

OWNER/COMPANY ____________________

STREET ADDRESS ____________________

CITY: ____________ STATE: ______ ZIP: ________

PHONE(HOME): ____________ PHONE(WORK): ____________

AGENT: ____________________

COMPANY NAME: ____________________

STREET ADDRESS(P O BOX NOT ACCEPTABLE) ____________________

CITY: ____________ STATE: ______ ZIP: ________

IF AUTHORIZED AGENT IS DESIGNATED ABOVE, THE EXTENT OF AGENT'S AUTHORITY TO RENT, MANAGE, MAKE EXPENDITURES, ACCEPT NOTICES AND PROCESS, SHALL BE STIPULATED BELOW:

____

____

____

SIGNATURE OF OWNER: ____________ DATE: ________

OWNER; *LIST STREET ADDRESSES* OF ALL PROPERTIES OWNED IN THE CITY OF FERGUSON:

____

____

* COPY OF SS# ____________ FED TAX ID ____________
OR DRIVERS LICENSE APPLICATION IS GOOD THROUGH APRIL 30, 2006

Ferguson Responsible Landlord Initiative

Notes to License Application Form

1. The new application form requires more information than the previous application. Please supply all information requested on the application.

2. Fill out a separate application form for each rental property owned in Ferguson.

3. Landlords are required to submit a personal criminal record check with the application. The record check can be obtained from St. Louis County Police Headquarters, 7900 Forsyth, Clayton, MO, 63105.

4. Landlords are required to submit a copy of the lease for each of their occupied rental units.

5. Landlords will be asked to submit a photo ID (driver's license) with their application.

Ferguson Responsible Landlord Initiative

Fact Sheet

What is the Responsible Landlord Initiative?

- A performance-based approach to regulating rental property in Ferguson.
- Designed to hold landlords and tenants responsible for property maintenance and for the conduct of the tenants.

What is the origin of the Responsible Landlord Initiative?

- An outgrowth of the *Ferguson by Design* approved by the City Council in 2004.
- Part of the *Ferguson by Design* Neighborhood Agenda, that focuses on generating demand by adding value and working to raise the bar of property values.

How will the Responsible Landlord Initiative work?

- All landlords will be considered *Responsible* at the start of the program.
- *Responsible* status will remain as long as a landlord keeps the property up to code, and there are no occupancy or criminal issues with the tenants.

What happens if a landlord attains *Provisional* status?

- The landlord must obtain an interior inspection of all their rental properties in Ferguson, and abate all predications. The City will supply a list of ASHI certified building inspectors.
- Occupancy or criminal issues with tenants must be satisfactorily resolved.
- No occupancy permits will be issued for any of the landlord's rental units.
- Higher license fee will be charged at time of renewal.
- The landlord will not return to *Responsible* status until all issues are resolved to the satisfaction of the City, and all appropriate fees are paid.

What happens if a landlord attains *Suspended* status?

- Some or all of the tenants may be subject to eviction.
- The City of Ferguson may seek receivership of affected rental properties.

Will landlords and tenants be notified of a change in status?

- Yes. The City of Ferguson will make a good faith effort to notify affected landlords and tenants.

When will the Responsible Landlord Initiative take effect?

- A new landlord license application will be mailed to landlords in March. The program will take effect on June 1, 2006.