



City of Maple Heights  
c/o John Montello Law Director  
5353 Lee Road  
Maple Heights, Ohio 44137

January 14, 2009

Sent via fax to (216) 662-2880 and U.S. mail

AMERICAN CIVIL  
LIBERTIES UNION  
OF OHIO FOUNDATION  
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Dear Mr. Montello:

The ACLU of Ohio has received complaints regarding Maple Heights Ordinance No. 2007-114 which requires rental property owners in the city of Maple Heights (a) to register their property with the Building Commissioner, and (b) to provide the Building Commissioner with eleven different pieces of information regarding the dwelling unit, its owner, and the tenants who reside therein. While many of these requirements may well be valid, at least four are clearly not. The city has no right to require the property owner, under threat of a criminal penalty and the loss of the right to rent his/her property, to provide the city (1) the "name of each primary or principal tenant with photo identification", (2) the (n)umber of adults, and children under 18 years of age, occupying the rental unit with a listing of the occupants", (3) the (n)ame and age of children attending school and name of school", or (4) the (s)ignature of the responsible tenant." To conscript the property owner as your agent to obtain the forgoing information violates the tenants' right to privacy secured by the 4<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution as well as the tenants' liberty/privacy interests under the 14<sup>th</sup> Amendment. Finally, the tenant information you request serves no legitimate police power interest, rendering these provisions invalid and outside your home rule authority.

We have been down this road before. In 2002, the ACLU of Ohio Foundation successfully sued the Maple Heights School District



for attempting to condition a child's right to attend school on their residing in a dwelling that complied with the Maple Heights City Building Code. You have now changed tactics. Rather than the School Board's using the City control over the condition of housing to ensure that only those lawfully residing in Maple Heights attend the Maple Heights Schools, the City is using its control over the conditions of housing to achieve the same goal. This is plainly unlawful.

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First, we are aware of no case that supports the requirement that an individual give his/her photograph, to a governmental authority. The only requirement that comes close is the right of a police officer to stop and ask a pedestrian to identify himself. But that is contingent on there being some cause to believe that a crime has been or is about to be committed. Even then there is certainly no requirement that the pedestrian submit to a photograph. Since your ordinance sets forth no such probable cause requirement, it violates the Fourth Amendment.

Second, while the City may have a right to enforce some occupant density requirements, it has no right to do so by requiring the property owner to list the names of those occupants, nor to a separate listing of those under the age of 18. Moreover, the City certainly has neither the right to, nor the need for, names and ages of the children attending school and the name of the school attended. It is irrelevant to the Housing and Building Code whether there are any children of school age in the dwelling unit. And it is unimaginable that the City has any Housing and/or Building Code related interest in the school these children attend, or indeed if they attend school at all. If you have no legitimate interest in or use for the tenant related information required in the ordinance, you certainly have no right to ask that the "responsible tenant" verifies the information via his/her signature. Since the tenant related information you seek has no relationship, reasonable or otherwise, to your authority to control the condition of housing in Maple Heights, it is beyond the City's police power to insist that the property owner provide it to you. Moreover, to the extent that Section 1486.02 (d) permits a search of the rental dwelling to verify the tenant information requested under subsection (c) 6, 7, and 11, that search violates the 4<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution.



Finally, while some of the information you seek is or may be relevant to the Maple Heights School Board, that Board is a separate municipal corporation with a separate governing authority and with separate powers and authorities. The School Board currently has a "Student Identification/Registration Form" and an "Affidavit of Residency" to ensure that only those students who are residents of that district can attend the schools. The tenant information you require in Ordinance No. 2007-114 is thus not only unrelated to any legitimate authority of the City, but even if in aid of the School District, is simply redundant of information the School District already possesses. Section 1486.02 (c) 6, 7, and 11 is therefore not only unlawful, but unnecessary.

We ask that the offending provisions of Ordinance No. 2007-114 be repealed at the earliest possible date and until then, those provisions not be enforced. If this request is not promptly respected, we will have to consider legal action against the City.

I look forward to hearing from you in the next two weeks to discuss this matter further.

Sincerely,

  
Jeffrey M. Ganso

Legal Director

American Civil Liberties Union of Ohio

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