

ORIGINAL

FILED
LUCAS COUNTY
IN THE COURT OF COMMON PLEAS
LUCAS COUNTY, OHIO
2017 NOV -2 PM 3:35

CHERYL MACK)
3507 Oakway Drive)
Toledo, Ohio 43614)

and)

PROPERTY INVESTOR'S NETWORK, INC.)
3131 Executive Parkway, Suite 100)
Toledo, Ohio 43606)

Plaintiffs,)

vs.)

CITY OF TOLEDO, OHIO)
c/o Adam Loukx)
One Government Center, Suite 2250)
Toledo, Ohio 43604)

and)

TOLEDO-LUCAS COUNTY BOARD OF HEALTH)
635 N. Erie Street)
Toledo, Ohio 43604)

Defendants.)

Case No.)
G-4801-CI-0201704676-000)
Judge)
LINDA J. JENNINGS)

Complaint for)
permanent injunction)

1. Plaintiffs have standing to bring this action under R.C. 733.59, the Toledo charter, and the common law.
2. As shown below, plaintiffs have a personal stake in the outcome since they are active participants in the Toledo residential rental market.
3. Further, R.C. 733.59 provides that, "If the...city director of law fails, upon the written request of any taxpayer of the municipal corporation, to make any application provided for in sections 733.56 to 733.58 of the Revised Code, the

taxpayer may institute the action in his own name, on behalf of the municipal corporation.”

4. Toledo's charter has a substantially identical provision.
5. Plaintiff Cheryl Mack is a taxpayer, resident, and real-estate investor in the Toledo residential rental market.
6. Plaintiff Property Investor's Network, Inc. ("PIN") is a non-profit trade group consisting of substantial investors in the Toledo rental market. PIN's members formed the group to protect their investments in Toledo by maintaining and attracting quality investors and property managers into the Toledo market. As a consequence, Toledoans have good choices in the residential market for single-family homes, duplexes, small apartment complexes, and other small-scale housing units.
7. PIN's members maintain good landlord-tenant relations and rent housing units to Toledoans of all ethnicities, ages, socio-economic classes, and backgrounds regardless of family status.
8. Still, PIN and Mack do not wish to be subjected to unconstitutional commands.
9. Both Ms. Mack and PIN and its membership have an interest in the enforcement of Toledo's "lead ordinance," codified at Toledo Municipal Code Chapter 1760.
10. This court may and should take judicial notice of that local legislative scheme.
11. Mack and PIN's membership are subject to the ordinance because of its requirements, which include substantial "inspection" and governmental fees.

12. The ordinance is causing uncertainty in the Toledo rental market.
13. Mack and PIN's membership would further invest in the Toledo market depending in part upon the status of the ordinance, which is unconstitutional. The status of the ordinance will affect future rents and property values and related sales transactions.
14. Because of its unconstitutionality, on October 23, 2017, counsel for Mack and PIN sent the attached correspondence to Adam Loukx, the Toledo law director. For purposes of brevity, that letter is hereby incorporated by reference as if it were fully rewritten herein.
15. As shown by the letter, both Mack and PIN requested that Mr. Loukx file litigation seeking to enjoin enforcement of the lead ordinance.
16. Because of the impending deadlines approaching in June of 2018 and because of the ongoing market uncertainty caused by the ordinance, Mack and PIN requested that Loukx take action by October 30, 2017.
17. The law director has the power to seek the requested relief under both the Revised Code and Toledo's charter.
18. Mr. Loukx promptly acknowledged receipt of the request, but stated that he did not see merit in the complaint and that he would not act before November 7, 2017-- Election Day.
19. And since October 30th he's taken no action in court to enjoin the ordinance.
20. Waiting for action—or the inevitable “no action”—from the law department would be wholly futile since: (a) the law department helped craft the ordinance, (b) at least one attorney from the law department attended a public

meeting since the October 23, 2017 letter, which the attorney knew of, yet did not mention the letter or a potential legal challenge and instead gave a presentation that presumed the ongoing nature of the ordinance, and (c) Mr. Loukx himself has publicly commented in the local news media that a challenge to the ordinance would be without merit. See <http://www.toledoblade.com/local/2017/05/29/Area-lawyers-confident-in-Toledo-lead-laws.html>

21. Finally, the Toledo Blade reported on October 26, 2017 that several members of Toledo city council proclaimed that the lead law would not be amended and is “here to stay.”
22. This court should enjoin enforcement of the lead law because it is unconstitutional in at least two respects as outlined in the attached letter.
23. *First*, the Toledo-Lucas County Health Department is a creature of statute.
24. Therefore, the health department and its board have only limited powers as enumerated by state statute. *D.A.B.E. Inc. v. Toledo-Lucas County Board of Health*, 96 Ohio St.3d 250, 2002-Ohio-4172.
25. Thus, “local boards cannot act in any area of public health without prior legislative approval.” *Id.* at ¶46.
26. No prior legislative approval exists with respect to the disputed measures.
27. As explained in the attached letter, no statute endows the department or defendant board of health with the power to be a licensing agency for residential housing units.

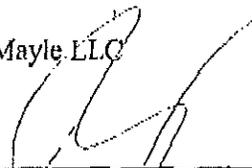
28. Nor does any statute endow the department or board with any of the powers contemplated by the ordinance. Indeed, if the board had such powers, duties, or obligations under a state statute, then the ordinance wouldn't exist because its existence would be superfluous. That is, a reason the ordinance exists is precisely because no statute gives the health department or its board the powers to act as contemplated by the ordinance.
29. Therefore, enforcement of the ordinance should be enjoined.
30. Similarly, Toledo city council has no power to issue edicts or mandates to the health department, its board, or any other creature of state statute.
31. The city council's attempts to vest the health department or its board with certain powers—and attempts to mandate that the department or its board take certain actions—is an arrogation of the General Assembly's exclusive powers under Ohio Const. Art. II, Sec. 1 and is therefore a nullity. Thus, this court should yet again enjoin the ordinance.
32. The city and health department purports to act under R.C. 3709.281. However, as explained in the attached letter, Toledo city council has only legislative powers. Therefore, the statute contemplates that Toledo city council may delegate its *legislative* power to the board of health, which could then write certain rules. But here, council seeks to retain its legislative power and “delegate” executive or administrative powers to the health department that neither the council nor the health department enjoy in the first instance. Further, the R.C. 3709.281 “agreement” came after enactment of the

ordinance, which was unconstitutional at its inception, is improperly executed, and is itself a nullity.

33. *Second*, as explained in the attached letter, the ordinance violates Ohio Const. Art. I, Sec. 2, the equal-protection clause, by (a) singling out rental—as opposed to all—residential properties constructed prior to 1978 and (b) discriminating on the number of units (4 or less). As explained in the letter, this distinction is not related to the ostensible purpose of the legislative scheme and is hence unconstitutional under *State v. Mole*, 149 Ohio St.3d 215, 2016-Ohio-5124 (a classification unrelated to the purpose of the law violates constitutional equal-protection guarantees).
34. The ordinance's classifications concerning residential housing, residential *rental* housing, and ultimately of only a certain segment of rental units flouts the ordinance's plain—and mandatory—presumption that “*all* paint on the interior or exterior of *any* residential building on which the original construction was completed prior to January 1, 1978 *shall* be presumed to be lead-based.” In sum, the ordinance creates an irrationally unequal playing field, is unconstitutional, and should be enjoined.
35. *Wherefore*, this court should enjoin enforcement of the “lead ordinance,” codified at Toledo Municipal Code Chapter 1760, and award plaintiffs their costs and attorney fees under R.C. 733.61.

Respectfully submitted,

Mayle LLC



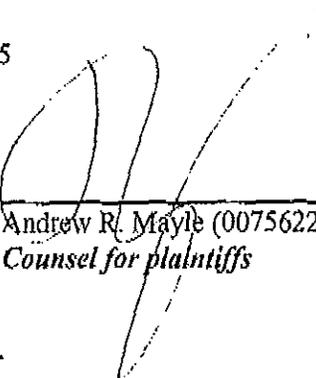
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INSTRUCTIONS FOR SERVICE

To the clerk:

Serve defendants by certified mail at the addresses listed in the complaint. And as required by R.C. 2721.12(A), serve a copy by certified mail upon the Ohio attorney general:

Richard M. DeWine, Esq.
Ohio Attorney General
30 E. Broad Street
Columbus, Ohio 43215



Andrew R. Mayle (0075622)
Counsel for plaintiffs