

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHESTER )

ORDINANCE NUMBER

**AN ORDINANCE TO REPEAL DORCHESTER COUNTY ORDINANCE NUMBER 07-02 THE "DORCHESTER COUNTY, SOUTH CAROLINA, LAWFUL EMPLOYMENT ORDINANCE" AND TO ADOPT THE FOLLOWING NEW SECTION 23 TO DORCHESTER COUNTY ORDINANCE NUMBER 91-08 PERTAINING TO BUSINESS LICENSES SO AS TO ADD THE "DORCHESTER COUNTY, SOUTH CAROLINA, LAWFUL EMPLOYMENT ORDINANCE" TO PROVIDE FROM EFFECTIVE DATE, SEVERABILITY, AND OTHER MATTERS RELATING THERETO.**

WHEREAS, on January 22, 2007, Dorchester County Council adopted Ordinance Number 07-02 entitled the "Dorchester County, South Carolina, Lawful Employment Ordinance"; and

WHEREAS, subsequent to adoption thereof, the South Carolina General Assembly adopted the "South Carolina Illegal Immigration Reform Act" which set forth certain state requirements concerning the verification of persons to insure that those persons were not "unauthorized aliens"; and

WHEREAS, in order to conform to the state legislation, Dorchester County Council has revised its lawful employment ordinance and wish to repeal existing Ordinance Number 07-02 and substitute in lieu thereof a new Section 23 to Ordinance Number 91-08 as more fully set forth below.

NOW, THEREFORE, be it ordained by Dorchester County Council, duly assembled, that Dorchester County Ordinance Number 07-02 entitled the "Dorchester County, South Carolina, Lawful Employment Ordinance" is hereby repealed in its entirety and the following new Section 23 is added to Ordinance Number 91-08 entitled "Dorchester County, South Carolina, Lawful Employment Ordinance".

**SECTION 23.A. FINDINGS AND DECLARATION OF PURPOSE**

This Section shall be known and may be cited as the "Dorchester County, South Carolina, Lawful Employment Ordinance."

**The Dorchester County Council finds and declares:**

State and federal law require that certain conditions be met before a person may be authorized to work in this country; and

Unauthorized aliens as defined by Federal law do not normally meet such conditions as a matter of law when present in the County of Dorchester; and

Unlawful employment harms the health, safety and welfare of persons authorized to work in the United States; and

The state and federal government lack the resources to properly protect the citizens of Dorchester County from the adverse effects of the employment of unauthorized aliens; and

The County finds that providing business license applicants and licensees (hereinafter "licensees") with information, education and assistance with respect to hiring only persons authorized to work in the United States will assist licensees in complying with State and Federal laws; will operate as a deterrent to the employment of unauthorized aliens in violation of Federal Law; and further, the County finds it appropriate to serve licensees doing business in the County by providing information with respect to employment eligibility, employment eligibility verification, and available automated systems which serve as employment eligibility verification checks; and, further, the County finds that it possesses authority delegated by the federal government pursuant to the United States Code Title 8, Sections 1324a(h)(2), 1373 and 1644, and further authority delegated by the State of South Carolina Illegal Immigration Reform Act to verify whether persons providing work or services on behalf of licensed businesses within the County are lawfully present in the United States under a citizenship or immigration status which authorizes the performance of such work.

The County finds it is in the best interests of, and will serve and benefit, the health, safety and welfare of the public and licensees to enact this Section to deter and prevent employment of unauthorized aliens; provided, however;

The County shall not construe this Section to prohibit rendering of emergency medical care, emergency assistance or legal assistance to any person.

**NOW THEREFORE, BE IT ORDAINED AND ENACTED**, by the County Council of Dorchester County, South Carolina, duly assembled and by the authority of the same as follows:

## **SECTION 23.B. DEFINITIONS**

When used in this Section 23, the following words, terms and phrases shall have the meanings ascribed to them herein and shall be construed so as to be consistent with state and federal law, including federal immigration law:

1. "Business" and "business entity" shall have the same meaning as provided in Dorchester County Ordinance 91-08 Sec.2.A.
2. "County" means the County of Dorchester, South Carolina.
3. "Contractor" means a person, licensee, subcontractor or business entity that enters into an agreement to perform any service or work or to provide a certain product in exchange for valuable consideration. This definition shall include but not be limited to a subcontractor, contract employee, or a recruiting or staffing entity.
4. "Director" means the Director of the South Carolina Department of Labor,

Licensing and Regulation, or his designee.

5. "Unauthorized alien" shall have the same meaning as 8 U.S.C. §1324a(h)(3) and means with respect to the employment of an alien at a particular time that the alien is not at that time either:
  - (a) an alien lawfully admitted for permanent residence; or
  - (b) authorized to be so employed by the United States Immigration and Nationality Act or by the United States Attorney General.

The County shall not conclude that a person is an unauthorized alien unless and until an authorized representative of the County has verified with the Director of the South Carolina Department of Labor, Licensing and Regulation, following an investigation conducted by that Department under the South Carolina Illegal Immigration Reform Act which finds that based on information obtained from the federal government, pursuant to United States Code Title 8, subsection 1373(c), the person's citizenship or immigration status is unauthorized.

6. "Basic Pilot Program" means an electronic verification of work authorization program provided under the auspices of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, P.L. 104-208, Division C, Section 403(a); United States Code Title 8, subsection 1324a, and operated by the United States Department of Homeland Security (or a successor program established by the federal government).
7. "Employment Eligibility Verification" means the verification by an authorized representative of the County of Dorchester that a person providing work or services on behalf of a business entity licensed by the County is lawfully present in the United States in an immigration status for which such work has been authorized. Verification is made by obtaining and adopting the findings of an enforcement action conducted by the Director of the South Carolina Department of Labor, Licensing and Regulation pursuant to the South Carolina Illegal Immigration Reform Act.

## **SECTION 23.C. INFORMATION, EDUCATION AND ASSISTANCE**

It is unlawful for any business entity to recruit, hire for employment, or continue to employ, or to permit, dispatch, or instruct any person who is an unauthorized alien to perform work in whole or part within the County.

Every business or person that applies for a business license to engage in any type of work in the County shall sign an affidavit, on a form designated by the County or prescribed by the South Carolina Illegal Immigration Reform Act, attesting under penalty of perjury that the business and, or person does not knowingly utilize the services of, engage or hire any person who is an unauthorized alien; and further, the licensee shall affirm and attest that as a condition of issuance for a business license the applicant accepts and agrees to the provisions of this Section 23 and shall fully cooperate with

the enforcement of Section 23 as provided herein.

Upon request, the County will provide a business license applicant or licensee with information pertaining to the requirements of the South Carolina Illegal Immigration Reform Act and Federal law regarding the unlawful employment of unauthorized aliens and unfair immigration-related employment practices.

#### **SECTION 23.D. ENFORCEMENT**

1. The County of Dorchester Business License Department shall enforce the requirements of this Section 23 in cooperation with and in deference to the South Carolina Illegal Immigration Reform Act.

For purposes of this section, an enforcement action is an action undertaken by the County to ascertain the lawful employment of any person within the County as may be determined by the Director of the South Carolina Department of Labor, Licensing and Regulation pursuant to an investigation under the South Carolina Illegal Immigration Reform Act.

2. An enforcement action shall be initiated by means of:
  - (a) a written signed complaint filed with the County Business License Department submitted by any County official, business entity, or County resident; or
  - (b) as a part of an audit made pursuant to Dorchester County Ordinance 91-08 Sec. 10; or
  - (c) as a result of notice of an investigation and/or findings from the Director of the South Carolina Department of Labor, Licensing and Regulation pursuant to the South Carolina Illegal Immigration Reform Act.
3. A complaint filed with the County Business License Department shall include specific allegations describing the alleged violation including but not limited to, the date and location where an alleged violation occurred. For purposes of this section, "the alleged violator" means a licensee and "the actions constituting a violation" include allegations which create in the mind of a reasonable person that the licensee engages in unlawful business practices in violation of this Section 23, Federal law, and/or the South Carolina Illegal Immigration Reform Act.
4. A complaint which alleges a violation solely or primarily on the basis of national origin, ethnicity, or race shall be deemed invalid and shall not be enforced nor shall same constitute grounds to conduct an audit pursuant to Dorchester County Ordinance 91-08 Sec.10.
5. Upon receipt of a written complaint alleging that a licensee has failed, neglected or refused to comply with this Section 23, Federal law, or the South Carolina

Illegal Immigration Reform Act, or upon receipt of specific information which would lead a reasonable person to conclude there exists cause to investigate the compliance of a licensee, the Business License Division will cause an investigation to commence by forwarding the complaint, audit results, or information to the Director of the South Carolina Department of Labor, Licensing and Regulation for further investigation pursuant to the South Carolina Illegal Immigration Reform Act.

6. If the Director's investigation of a complaint or the results of an audit by the Director show that the licensee:
  - (a) complied with 8 U.S.C. 1324 a; or
  - (b) has otherwise complied with the South Carolina Illegal Immigration Reform Act; then

further enforcement action by the County shall be immediately concluded and any complainant and licensee notified thereof in writing.

7. If an investigation of a complaint or the results of an audit conducted by the Director of the South Carolina Department of Labor, Licensing and Regulation, pursuant to the South Carolina Illegal Immigration Reform Act, show that the licensee is in violation of the South Carolina Illegal Immigration Reform Act, the County shall, exclusive of monetary penalty, subscribe the same license suspension or revocation penalty upon the licensee as is imposed upon the licensee by the Director under section 41-8-50 of the South Carolina Code of Laws, and such suspension or revocation shall run concurrently with the penalty imposed upon the licensee by the Director and shall not be reinstated until the licensee has complied with the requirements of the South Carolina Illegal Immigration Reform Act to the satisfaction of the Director, of which such compliance shall be verified by the County Business License Department before reinstatement will be authorized. Any license reinstatement by the County shall be subject to the same probationary period(s) and requirements as set forth by the South Carolina Illegal Immigration Reform Act. No penalty shall be imposed by the County until the County has received notice from the Director that a penalty has been prescribed and is currently in effect against the licensee by the State.
8. Appeals: An appeal from a finding by the Director of the South Carolina Department of Labor, Licensing and Regulation shall stay the enforcement or assessment of penalty by the County until such time the appeal is concluded. The results of any appeal of the Director's finding shall be conclusive on the County and no action to impose a penalty shall be taken by the County until the County has received notice from the Director that the results of the finding have been affirmed and a penalty has been prescribed and is currently in effect against the licensee by the State.
9. Penalties: The exclusive remedy for violation of this Section 23 is as provided herein.

- (a) Notwithstanding the monetary penalty provided at Dorchester County Ordinance 91-08, the exclusive penalty for violation of this Section 23 shall consist of suspension or revocation of the business license of any business entity which has been found to be in violation of the South Carolina Illegal Immigration Reform Act.
  - (b) The suspension of a business license penalty shall be the same license suspension or revocation penalty upon the licensee as is imposed upon the licensee by the Director under section 41-8-50 of the South Carolina Code of Laws, and such suspension or revocation shall run concurrently with the penalty imposed upon the licensee by the Director. However, No penalty shall be imposed by the County until the County has received notice from the Director that a penalty has been prescribed and is currently in effect against the licensee by the State.
  - (c) Any license reinstatement by the County shall be subject to the same probationary period(s) and requirements as set forth by the South Carolina Illegal Immigration Reform Act.
10. All agencies of the County shall enroll and participate in the Basic Pilot Program.
11. As a condition for any award of any County contract or grant to a business entity for which the value of employment, labor, or personal services shall exceed \$10,000, the business entity shall provide documentation confirming its enrollment and participation in the Employment Eligibility Verification program as provided by the South Carolina Illegal Immigration Reform Act.

#### **SECTION 23.E. PROHIBITION OF DISCRIMINATION**

1. The Federal Immigration and Nationality Act, as amended, and Title VII of the Civil Rights Act of 1964, as amended, the South Carolina Human Affairs Law, as amended, the South Carolina Unfair Trade Practices Act, as amended, among other Federal and State laws and regulations prohibit employment discrimination. Employers must treat all employees the same when completing employment eligibility verification documents. Employers may not set different employment eligibility verification standards or require different documents to be presented by different groups of employees.
2. An allegation of discrimination may be filed by an individual who believes he or she is the victim of employment discrimination by contacting the appropriate State and Federal agencies. The Dorchester County Business License Department provides a list of State and Federal agencies authorized to accept and investigate complaints alleging employment discrimination.

#### **Section 23.F. Applicability and Effective Date**

This Section 23 shall become effective upon third and final reading.

**Section 23.G. Severability**

If any part of this Section 23 is held by a court of competent jurisdiction to be unconstitutional, illegal, or invalid for any reason, it shall be construed to have been the legislative intent of the County Council of Dorchester County, South Carolina, to pass this Section without such unconstitutional, illegal or invalid provision, and the remainder of this Section 23 shall be deemed and held to be constitutional, lawful and valid as if such portion had not been included. If this Section 23 or any provision thereof is held by a court of competent jurisdiction to be inapplicable to any person, group of persons, property, kind of property, circumstances or set of circumstances, such holding shall not affect the applicability thereof to any other persons, property or circumstances.

Approved and adopted this \_\_\_\_\_<sup>th</sup> day of \_\_\_\_\_

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Larry Hargett, Chairman  
Dorchester County Council

First Reading: 10/06/08  
Second Reading: 11-03-08  
Public Hearing: 11-03-08  
Third Reading:

ATTEST:

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Sandy Lawley, Clerk of Council