

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

ORDINANCE NUMBER 07-02

AN ORDINANCE TO ADD A NEW SECTION 23 TO DORCHESTER COUNTY ORDINANCE NO. 91-08 PERTAINING TO BUSINESS LICENSES SO TO ADD THE "DORCHESTER COUNTY, SOUTH CAROLINA, LAWFUL EMPLOYMENT ORDINANCE," TO PROVIDE FOR AN EFFECTIVE DATE, SEVERABILITY, AND OTHER MATTERS RELATING THERETO

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 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:

“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. “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.
5. 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 federal government, pursuant to United States Code Title 8, subsection 1373(c), the person’s citizenship or immigration status.
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 the submission of such personal data of such a person as may be required by the appropriate federal government agency, which has been duly collected by the business and provided to the County pursuant to an enforcement action under this Section 23.

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, 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 Section 23 as provided herein.

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

SECTION 23.D. ENFORCEMENT

The County of Dorchester Business License Department shall enforce the requirements of this Section 23.

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.

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.

3. A complaint 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.
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. A licensee shall not be subject to license suspension if the licensee, prior to the date of the alleged violation, shows to the satisfaction of the Business License Department that it verified employment eligibility for all newly hired individuals under an electronic verification of work authorization program as defined in Sec. 23.B.6.
6. Upon receipt of a written complaint alleging that a licensee has failed, neglected or refused to comply with this Section 23 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.
7. The Business License Division shall request a licensee to provide information, including but not limited to, employee identity information.
8. If an investigation of a complaint or the results of an audit show that the licensee:
 - (a) complied with 8 U.S.C. 1324 a; or
 - (b) utilizes the “Basic Pilot Program” (or an equivalent Program) and electronically verifies work authorization for all individuals subject to this Section 23;the investigation shall be immediately concluded and the complainant notified thereof in writing.
9.
 - (a) If an investigation of a complaint or the results of an audit show that the licensee failed, refused, or neglected to provide documentation of employment verification as required pursuant to 8 U.S.C. §1324a or, upon production of such documentation, the County obtains verification information pursuant to 8 U.S.C. §1373 evidencing the employment of unauthorized alien(s), the employer shall receive written notice of the findings and notice of further action, including, but not limited to, possible suspension of the licensee’s business license.
 - (b) Upon receipt of such notice, the licensee may submit to the Business

License Department any additional documentation to support that the individual is authorized to work in the United States. Additional documentation shall be filed with the Department within (15) business days from the date of notice unless an extension of up to forty-five (45) working days is requested and granted. During this period, the licensee's business practices may remain unaltered. However, absent additional documentation to support a finding of lawful employment, the licensee shall be subject to license suspension as provided in Subsection 11.

- (c) Upon the expiration of the period referred to in Subsection 9(b), above, the failure, refusal or neglect by the licensee to provide additional documentation shall support the entry of a finding of a violation of this Section 23. All findings shall be made in writing with findings of fact and conclusions of law separately stated.
10. Appeals: An appeal from a finding shall be made to the Circuit Court under the applicable rules of Civil Procedure relating to an appeals from a final adjudication.
11. 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 of the business license of any business entity which fails to correct a violation of this section within three (3) business days after receipt of notification of a violation by the County.
 - (b) The suspension of a business license shall terminate one (1) business day after a legal representative of the business entity submits to the Business License Department a sworn affidavit attesting that the violation has ended.
 - (c) The affidavit shall include a description of the specific measures and actions taken by the licensee to end the violation and shall include the name, address and other identifying information of the unauthorized alien related to the complaint.
 - (d) Upon a finding, that a licensee employs two (2) or more unauthorized aliens, the licensee shall be required to file with the Business License Department, in addition to the affidavit provided in Section 11.b. above, documentation acceptable to the County which evidences that the licensee has enrolled and participates in the Employment Eligibility Verification program provided at Section 23.B.7. for the duration of the business license granted to the licensee.
 - (e) In the event of a second or subsequent violation of Section 23, the

Business License Department shall suspend the licensee's business license for a period of twenty (20) days. Upon the expiration of the suspension, and upon receipt of the affidavit provided in Section 11.b. above, the Business License Department shall reinstate the licensee's business license and notify the appropriate Federal enforcement agency of same. In the case of the employment of a person unauthorized to work under State law and which is not related to Federal immigration laws, the Business License Department shall notify the appropriate State agency(s).

12. All agencies of the County shall enroll and participate in the Basic Pilot Program.
13. 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 provided at Section 23 B.7.

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 on

July 1, 2007

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 BY THE COUNTY COUNCIL OF DORCHESTER COUNTY, SOUTH CAROLINA ON THIS 22nd DAY OF JANUARY 2007.

COUNTY COUNCIL OF DORCHESTER COUNTY

BY: 
LARRY S. HARGETT
Its: Chairman

ATTEST:

BY: 
Sandy W. Lawley, Clerk to Council

First Reading: 11/20/06
Second Reading: 1/08/07
Public Hearing: 1/08/07
Third Reading: 1/22/07