

## MODEL ILLEGAL IMMIGRATION RELIEF ORDINANCE

### AN ORDINANCE

To establish penalties for the employment of unlawful workers and the harboring of illegal aliens in the City of [Ames], and to provide for cooperative enforcement of federal immigration laws by the City police department.

BE IT ENACTED BY THE COUNCIL OF THE CITY OF [AMES], [AMES] COUNTY, STATE OF [AMES]:

#### SECTION ONE:

A. The ordinance shall be known and may be cited as the “City of Ames Illegal Immigration Relief Ordinance.”

#### B. Findings

The people of the City of [Ames] find and declare:

1. State and federal law require that certain conditions be met before a person may be authorized to work or reside in this country.
2. Unlawful workers and illegal aliens, as defined by this ordinance and state and federal law, do not normally meet such conditions as a matter of law when present in the City.
3. Unlawful employment, the harboring of illegal aliens in dwelling units in the City, and crime committed by illegal aliens harm the health, safety and welfare of authorized U.S. workers and legal residents in the City.
4. The state and federal government lack the resources to properly protect the citizens of the City of [Ames] from the adverse effects of unauthorized employment, harboring of illegal aliens, and the activities of criminal aliens.
5. The City finds that it is in the best interests of and will serve and benefit the health, safety and welfare of the public and law-abiding business entities and property owners to adopt policies and procedures to deter and prevent unauthorized employment, harboring of illegal aliens, and criminal activity by illegal aliens.
6. United States Code Title 8, subsection 1324(a)(1)(A) prohibits the harboring of illegal aliens. The provision of housing to illegal aliens is a fundamental component of harboring.

7. The City shall not construe this ordinance to prohibit the rendering of emergency medical care, emergency assistance, or legal assistance to any person.

**C. Definitions:**

When used in this ordinance, 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 Entity:** Any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood, whether for profit or not for profit.

(a) The term business entity shall include but not be limited to self-employed individuals, partnerships, corporations, contractors, and subcontractors.

(b) The term business entity shall include any business entity that possesses a [business permit/license/tax certificate], any business entity that is exempt by law from obtaining such a business [permit], and any business entity that is operating unlawfully without such a business [permit].

2. **City:** The City of [Ames].

3. **Contractor:** A person, employer, 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. **Illegal Alien:** An alien who is not lawfully present in the United States, according to the terms of United States Code Title 8, section 1101 et seq. The City shall not conclude that a person is an illegal alien unless and until an authorized representative of the City has verified with the federal government, pursuant to United States Code Title 8, subsection 1373(c), that the person is an alien who is not lawfully present in the United States.

5. **Unlawful worker:** A person who does not have the legal right or authorization to work due to an impediment in any provision of federal, state or local law, including but not limited to a minor disqualified by nonage, or an unauthorized alien as defined by United States Code Title 8, subsection 1324a(h)(3).

6. **Work:** Any job, task, employment, labor, personal services, or any other activity for which compensation is provided, expected, or due, including but not limited to all activities conducted by business entities.

7. **Basic Pilot Program:** The electronic verification of work authorization program 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.)

## **SECTION TWO. Business Permits, Contracts or Grants**

The City Code is amended by adding the following as new section [123]:

A. 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 unlawful worker to perform work in whole or part within the City. Every business entity that applies for a [business permit/license/tax certificate] to engage in any type of work in the City shall sign an affidavit, prepared by the City Attorney, affirming that they do not knowingly utilize the services or hire any person who is an unlawful worker.

B. **Enforcement:** The [agency responsible for issuing business permits] shall enforce the requirements of this section.

1. An enforcement action shall be initiated by means of a written signed complaint to [the agency] submitted by any City official, business entity, or City resident. A valid complaint shall include an allegation which describes the alleged violator(s) as well as the actions constituting the violation, and the date and location where such actions occurred.

2. 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.

3. Upon receipt of a valid complaint, the [agency] shall, within three business days, request identity information from the business entity regarding any persons alleged to be unlawful workers. The [agency] shall suspend the [business permit/license/exemption] of any business entity which fails, within three business days after receipt of the request, to provide such information. In instances where the unlawful worker is alleged to be an illegal alien, the [agency] shall submit identity data required by the federal government to verify, pursuant to United States Code Title 8, section 1373, the immigration status of such persons, and shall provide the business entity with written confirmation of that verification.

4. The [agency] shall suspend the [business permit/license/exemption] of any business entity which fails correct a violation of this section, within three business days after notification of the violation by the [agency].

5. The [agency] shall not suspend the [business permit/license/exemption] of a business entity if, prior to the date of the violation, the business entity had verified the work authorization of the alleged unlawful workers using the Basic Pilot Program.

6. The suspension shall terminate one business day after a legal representative of the business entity submits, at a City office designated by the City Attorney, a sworn affidavit stating that the violation has ended.

(a) The affidavit shall include a description of the specific measures and actions taken by the business entity to end the violation, and shall include the name, address and other adequate identifying information for the unlawful workers related to the complaint.

(b) Where two or more of the unlawful workers were verified to be illegal aliens, the legal representative of the business entity shall submit to the [agency], in addition to the prescribed affidavit, documentation acceptable to the City Attorney which confirms that the business entity has enrolled in and will participate in the Basic Pilot program for the duration of the validity of the [business permit/license/exemption] granted to the business entity.

7. For a second or subsequent violation, the [agency] shall suspend the [business permit/license/exemption] of a business entity for a period of twenty days. After the end of the suspension period, and upon receipt of the prescribed affidavit, the [agency] shall reinstate the [business permit/license/exemption]. The [agency] shall forward the affidavit, complaint, and associated documents to the appropriate state or federal enforcement agency.

C. All agencies of the City shall enroll and participate in the Basic Pilot Program.

D. As a condition for the award of any City 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 affirming its enrollment and participation in the Basic Pilot Program.

E. Private Cause of Action for Unfairly Discharged Employees

1. The discharge of any employee who is not an unlawful worker by a business entity in the City is an unfair business practice if, on the date of the discharge, the business entity was not participating in the Basic Pilot program and the business entity was employing an unlawful worker.

2. The discharged worker shall have a private cause of action in the [municipal court] of [Ames] against the business entity for the unfair business practice. The business entity found to have violated this subsection shall be liable to the aggrieved employee for:

(a) three times the actual damages sustained by the employee, including but not limited to lost wages or compensation from the date of the discharge until the date the employee has procured new employment at an equivalent rate of compensation, up to a period of one hundred and twenty days; and (b) reasonable attorney's fees and costs.

### **SECTION THREE. Harboring Illegal Aliens**

The [City rental ordinance] is amended to add the following new section [456]:

A. It is unlawful for any person or business entity that owns a dwelling unit in the City to harbor an illegal alien in the dwelling unit, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, unless such harboring is otherwise expressly permitted by federal law.

1. For the purposes of this section, to let, lease, or rent a dwelling unit to an illegal alien, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, shall be deemed to constitute harboring. To suffer or permit the occupancy of the dwelling unit by an illegal alien, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, shall also be deemed to constitute harboring.

2. A separate violation shall be deemed to have been committed on each day that such harboring occurs, and for each adult illegal alien harbored in the dwelling unit, beginning one business day after receipt of a notice of violation from the [agency].

3. A separate violation of this section shall be deemed to have been committed for each business day on which the owner has failed, following written notice from the [agency], to provide the [agency] with identity data needed to obtain a federal verification of immigration status, beginning three days after the owner receives written notice from the [agency].

B Enforcement: The [agency responsible for issuing rental licenses or occupancy permits] shall enforce the requirements of this section.

1. An enforcement action shall be initiated by means of a written signed complaint to [the agency] submitted by any official, business entity, or resident of the City. A valid complaint shall include an allegation which describes the alleged violator(s) as well as the actions constituting the violation, and the date and location where such actions occurred.

2. 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.

3. Upon receipt of a valid written complaint, the [agency] shall, pursuant to United States Code Title 8, section 1373(c), verify with the federal government the lawful immigration status of a person seeking to use, occupy, lease, or rent a dwelling unit in the City. The agency shall submit identity data required by the federal government to verify immigration status. The City shall forward identity data provided by the owner to the federal government, and shall provide the property owner with written confirmation of that verification.
4. Within [three] business day[s] after the date of the verification of the violation, the [agency] shall deny or suspend the [rental license/occupancy permit] of a dwelling unit whose owner has failed to correct a violation of this section. If after five business days following receipt of written notice from the City that a violation has occurred and that the immigration status of any alleged illegal alien has been verified, pursuant to United States Code Title 8, section 1373(c), the owner of the dwelling unit fails to correct a violation of this section, the [agency] shall deny or suspend the [rental license/occupancy permit] of the dwelling unit.
5. For the period of suspension, the owner of the dwelling unit shall not be permitted to collect any rent, payment, fee, or any other form of compensation from, or on behalf of, any tenant or occupant in the dwelling unit.
6. The denial or suspension shall terminate one business day after a legal representative of the dwelling unit owner submits, at a City office designated by the City Attorney, a sworn affidavit stating that each and every violation has ended. The affidavit shall include a description of the specific measures and actions taken by the business entity to end the violation, and shall include the name, address and other adequate identifying information for the illegal aliens who were the subject of the complaint.
7. The [agency] shall forward the affidavit, complaint, and associated documents to the appropriate state or federal enforcement agency.
8. Any dwelling unit owner who commits a second or subsequent violation of this section shall be subject to a fine of one hundred (\$100) dollars for each separate violation. The suspension provisions of this section applicable to a first violation shall also apply.
9. Upon the request of a dwelling unit owner, the [agency] shall, pursuant to United States Code Title 8, section 1373(c), verify with the federal government the lawful immigration status of a person seeking to use, occupy, lease, or rent a dwelling unit in the City. The penalties in this section shall not apply in the case of dwelling unit occupants whose status as an alien lawfully present in the United States has been verified.

#### **SECTION FOUR. Police Cooperation and Assistance in Enforcement of Immigration Laws**

The City Code is amended to add the following new section [789]:

A. All officials, agencies, and personnel of the City shall fully comply with and, to the full extent permitted by law, support the enforcement of federal law prohibiting the

entry into, presence or residence in the United States of aliens in violation of federal immigration law.

B. City police officers shall inquire into the citizenship or immigration status of any person detained for a violation of a state law or municipal ordinance, regardless of the person's national origin, ethnicity, or race, where such inquiry does not expand the duration of the detention. In all such cases where a person indicates that he or she is not a citizen or national of the United States, the police department shall verify whether or not the person is lawfully present in the United States, pursuant to United States Code Title 8, subsection 1373(c). If the person is verified to be unlawfully present in the United States, the police department shall cooperate with any request by federal immigration authorities to detain the alien or transfer the alien to the custody of the federal government.

C. Pursuant to United States Code Title 8, sections 1373 and 1644, no official, personnel or agent of the City, including officers and personnel of the police department, may be prohibited or in any way restricted from sending, receiving, or maintaining, information regarding the immigration status, lawful or unlawful, of any individual, or exchanging such information with any other federal, state or local government entity for the following official purposes:

1. Determination of eligibility for any federal, state or local public benefit, service or license which is restricted, in whole or in part, to non-qualified aliens, pursuant to United States Code Title 8, section 1621;

2. Verification of any claim of legal domicile within the City by a person who asserts that he or she is not a citizen, national, or legal resident alien of the United States; where legal domicile is required by law or contract;

D. The police department of the City shall as quickly as practicable enter into a cooperative agreement with the United States Department of Homeland Security, pursuant to United States Code Title 8, subsection 1357(g), to designate specific City law enforcement officers as officers qualified to exercise the enforcement powers of federal immigration officers in the United States. The police department may negotiate the cooperative agreement or participate in its implementation in partnership with other state or local law enforcement agencies.

**SECTION FIVE. Construction and Severability**

A. The requirements and obligations of this section shall be implemented in a manner fully consistent with federal law regulating immigration and protecting the civil rights of all citizens and aliens.

B. If any provision of this ordinance is declared invalid, such invalidity shall not affect other provisions of this ordinance which can be given effect without the invalid provision. The provisions of this ordinance are declared to be severable.