

STATE OF [STATE]  
COUNTY OF [LAWFUL]

ORDINANCE NO. 2007-\_\_\_\_

An Ordinance to amend the Code of Ordinances of [Lawful] County to add Section [00-000] et. seq.; to establish penalties for the harboring of illegal aliens in [Lawful] County; and to promote the public health, safety, and welfare.

BE IT ORDAINED by the [Lawful] County Board of Commissioners and it is hereby enacted pursuant to the authority of the same that the Code of Ordinances of [Lawful] County is hereby amended by adding thereto the following:

**SECTION 1. FINDINGS.**

The following findings shall be included in the Code of Ordinances as Section [00-001]:

- A. Federal law requires that certain conditions be met before an alien may be authorized to be lawfully present in the United States. Those conditions are found principally at United States Code Title 8, Section 1101, et. seq.
- B. Illegal aliens, as described by federal law, do not meet such conditions as a matter of law when present in the County.
- C. United States Code Title 8, Section 1324(a)(1)(A) prohibits the harboring of illegal aliens. The provision of housing to illegal aliens is a fundamental component of the federal immigration crime of harboring, as the Courts of the United States have held. *United States v. Aguilar*, 883 F.2d 662, 669-670 (9<sup>th</sup> Cir. 1989); *United States v. Lopez*, 521 F.2d 437 (2<sup>nd</sup> Cir. 1975), *cert. denied*, 423 U.S. 995 (1975).
- D. The presence of illegal aliens places a severe fiscal burden on the County, increasing the demand for, and cost of, public benefits and services.
- E. Crime committed by illegal aliens harms the health, safety and welfare of U.S. citizens and aliens lawfully present in the United States.
- F. In 1996 Congress amended the Immigration and Nationality Act to require the federal government to verify the immigration status of any alien upon the request of a state, county, or municipality, for any purpose authorized by law. United States Code Title 8, Section 1373(c). The federal government has

established several systems to accomplish this obligation, including the Systematic Alien Verification for Entitlements (SAVE) Program and the Law Enforcement Support Center (LESC).

## **SECTION 2. DEFINITIONS**

The following definitions shall be included in the Code of Ordinances as Section [00-002].

For the purposes of this Ordinance, the following 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:

A. *Illegal alien* means 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 County shall not conclude that an individual is an illegal alien unless and until an authorized representative of the County has verified with the federal government, pursuant to United States Code Title 8, Section 1373(c), such individual's immigration status.

B. *Unlawfully present in the United States* means unlawfully present in the United States according to the terms of United States Code Title 8, Section 1101 et seq. The County shall not conclude that an alien is unlawfully present in the United States unless and until an authorized representative of the County has verified with the federal government, pursuant to United States Code Title 8, Section 1373(c), such alien's immigration status.

C. *Dwelling unit* means a single residential unit with living facilities for one or more persons, including space for living, sleeping, eating, cooking, bathing and sanitation, whether furnished or unfurnished, that is let or rented for valuable consideration. There may be more than one rental unit on a premises. In a multifamily residence or apartment building, each residential unit or apartment constitutes a separate dwelling unit.

D. *Occupant* means a person, age 18 or older, who resides at a dwelling unit. A temporary guest of an occupant is not an occupant for the purposes of this ordinance.

E. *Unauthorized alien* means an alien who does not have authorization of employment in the United States, as defined by United States Code Title 8, Section 1324a(h)(3). The County shall not conclude that an individual 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, Section 1373(c), such individual's immigration status.

F. ***Business entity*** means any person, group of persons, partnership or corporation, enterprise, profession or occupation, performed or engaged in by any person or persons for gain, benefit, advantage, or livelihood, and shall include all such activities or enterprises whether preformed in one or more establishments by one or more corporate or other organizational units, including departments or an establishment operated through leasing arrangements, whether for profit or not-for-profit. The term business entity shall include but not be limited to contractors, subcontractors, self-employed individuals, partnerships, and corporations. The term business entity shall include any business entity that possesses a business license, any business entity that is exempt by law from obtaining such business license, and any business entity that is operating unlawfully without such business license.

G. ***Business license*** means any license, permit, occupation tax registration, business registration, or registration certification issued to a business entity by the County, including but not limited to all such licenses described under the County Code of Ordinances, Sections [xx-xx] through [xx-xx].

H. ***Work*** means 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.

I. ***Basic Pilot Program*** means the electronic verification of employment 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, Section 1324a, and operated by the United States Department of Homeland Security (or a successor program established by the federal government).

### **SECTION 3. HARBORING ILLEGAL ALIENS**

The following shall be included in the Code of Ordinances as Section [00-003]:

A. It is unlawful for any person or entity that owns a dwelling unit in the County 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.

B. 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.

C. A separate violation shall be deemed to have been committed on each day that such harboring occurs, and for each illegal alien aged 18 years or older harbored in the dwelling unit, beginning one business day after receipt of a notice of violation from the County, and concluding on the day that the violation is corrected, according to the terms of this Ordinance.

D. Condition of Lease. An occupant may not enter into a contract for the rental or lease of a dwelling unit in the County unless the occupant is either a U.S. citizen or national, or an alien lawfully present in the United States according to the terms of United States Code Title 8, Section 1101 et seq. An occupant who is neither a U.S. citizen or national, nor an alien lawfully present in the United States, who enters into such a contract shall be deemed to have breached a condition of the lease. An occupant who is an alien who subsequent to the beginning of his lease becomes unlawfully present in the United States shall be deemed to have breached a condition of the lease.

E. Prospective Application Only. This Ordinance shall apply only to contracts to let, lease, or rent dwelling units that are entered into, and tenancies that begin after the date that the Ordinance becomes effective.

#### **SECTION 4. ISSUANCE OF OCCUPANCY LICENSES**

The following shall be included in the Code of Ordinances as Section [00-004]:

A. Prior to occupying any leased or rented dwelling unit, each occupant must obtain an occupancy license.

B. It is the occupant's responsibility to submit an occupancy license application to the County Business License Division, pay a fee of \$5 to the County, and obtain an occupancy license. If there are multiple occupants seeking to occupy a single rental unit, each occupant must obtain his or her own license. An applicant for an occupancy license may designate the owner or manager of the dwelling unit as his agent to collect the required information and submit the required application form(s), signed by the applicant, to the County Business License Division on the applicant's behalf. The Business License Division may establish a procedure whereby an applicant (or designated owner or agent) may submit the required application form(s), signed by the applicant, via facsimile or website portal.

C. The owner or manager of any dwelling unit must notify each prospective occupant of this requirement and shall not permit occupancy of a dwelling unit unless the occupant first obtains an occupancy license. Each occupancy license is valid only for the occupant for as long as the occupant continues to occupy the dwelling unit for which such license was applied. Any relocation to a different dwelling unit requires a new occupancy license.

D. Applications for occupancy licenses shall be made upon forms furnished by the County Business License Division for such purpose and shall require the following information:

- (1) full legal name of occupant;
- (2) mailing address of occupant;
- (3) address of dwelling unit for which occupant is applying, if different from mailing address;
- (4) name and business address of dwelling unit owner or manager;
- (5) date of lease commencement;
- (6) date of birth of occupant;
- (7) occupant's country of citizenship;
- (8) full legal name and date of birth of each minor dependent residing with occupant;
- (9) (a) *in cases in which the applicant is a United States citizen or national*, a signed declaration that the applicant is a United States citizen or national on a form provided by the County, which notifies the applicant that falsely claiming United States citizenship in order to obtain a state benefit is a crime under United States Code Title 18, Section 1015(e);

-or-

(b) *in cases in which the applicant is not a United States citizen or national*, an identification number assigned by the federal government that the occupant believes establishes his lawful presence in the United States (examples include, but are not limited to: resident alien card number, visa number, "A" number, I-94 registration number, employment authorization number, or any other number on a document issued by the U.S. Government). *If the alien does not know of any such number, he shall so declare.*

E. Upon receipt of the completed application and payment of applicable fee as set forth above, the County Business License Division shall immediately issue an occupancy license to the occupant. The County Business License Division shall not deny an occupancy license to any occupant who submits a completed application.

F. All information contained in occupancy license applications shall be maintained as confidential by the County. Publication of such information by

any County official is prohibited. A violation of this Section by any County official shall be subject to a fine of up to \$500.

G. Any occupant of a rented or leased dwelling unit who does not possess a valid occupancy license permitting him to occupy the dwelling unit shall be subject to a fine of up to \$500.

#### **SECTION 5. ENFORCEMENT OF HARBORING PROHIBITION**

The following shall be included in the Code of Ordinances as Section [00-005]:

Notwithstanding any other provision of this Ordinance, the County Business License Department and the County [Sheriff] shall enforce the requirements of this Ordinance as follows.

A. An enforcement action shall be initiated by means of a written, signed complaint to the County Business License Department submitted by any official or resident of the County. The County Attorney shall prepare a complaint form for this purpose which states that the allegations made on the form purport to be a lawful affirmation and informs the complainant of the crime of false swearing, [State Code] § [xx-xx-xx], and the penalties thereof. A valid complaint must include an allegation which describes:

- (1) the location of the dwelling unit,
- (2) the reasons for suspecting that the dwelling unit owner is harboring an alien unlawfully present in the United States, 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,
- (3) the occupant alleged to be an alien unlawfully present in the United States,
- (4) the dwelling unit owner or manager,
- (5) the dates of the alleged violation.

B. The County Business License Department shall assess the information in the complaint and any other information that the County Business License Department possesses or acquires to determine if there is probable cause to believe that a violation of this Ordinance has occurred. If probable cause exists, the complaint shall be deemed valid.

C. A complaint that alleges a violation on the basis of national origin, ethnicity, or race shall be deemed invalid.

D. Upon determination that a complaint is valid, the County Business License Department shall, pursuant to United States Code Title 8, Section 1373(c), verify with the

federal government whether the occupant in question is an alien lawfully present in the United States. The County Business License Department shall submit identity and status information submitted by the occupant when he obtained his occupancy license, along with any other information requested by the federal government to verify that the occupant is lawfully present in the United States.

E. If the federal government does not confirm that the occupant is lawfully present in the United States, the County shall provide the dwelling unit owner and the occupant with written notice of the tentative harboring violation and the determination of the occupant's immigration status by the federal government. The written notice shall inform the dwelling unit owner and the occupant that they may contest such determination by providing any additional information to the County Business License Department that they wish, including additional information establishing that the occupant is not an alien unlawfully present in the United States. If the occupant or dwelling unit owner provides such information, the County Business License Department shall submit that information to the federal government, pursuant to United States Code Title 8, Section 1373(c), to again verify with the federal government whether the occupant in question is an alien lawfully present in the United States.

F. If, eight days after the receipt of written notice from the County that a tentative harboring violation has occurred, neither the occupant nor the dwelling unit owner has submitted additional information which establishes that no violation of this Ordinance has occurred, or additional information when submitted to the federal government results in a verification that the occupant is an alien unlawfully present in the United States, then the County Business License Department shall send to the dwelling unit owner and the occupant written notice that a conclusive violation of this Ordinance has occurred.

G. Upon receipt of written notice of a conclusive violation of this Ordinance, the dwelling unit owner shall have ten business days to correct the violation by taking either one of the following actions:

- (1) Issuing and serving upon the occupant a notice to quit, in writing, declaring a forfeiture of the lease for breach of the lease condition described in Section 3.D.
- (2) The commencement of a dispossessory proceeding or demand for possession of real property in accordance with [State] law, and with requisite notice, by the dwelling unit owner against the occupant. If such action is contested by the occupant, the dwelling unit owner shall be deemed to have complied with this Ordinance while the dwelling unit owner continues to pursue the action in court.

H. If the dwelling unit owner fails to correct a conclusive violation of this Ordinance, the County Business License Department shall suspend the rental license of the dwelling unit owner.

I. For the period of suspension, the owner of the dwelling unit shall not collect any rent, payment, fee, or any other form of compensation from, or on behalf of, any occupant or tenant in the dwelling unit.

J. The suspension shall terminate one business day after the dwelling unit owner submits to the County Business License Department a sworn affidavit stating that each and every conclusive violation has ended. The affidavit shall include a description of the specific measures and actions taken to end the violation.

K. The County Business License Department shall forward the affidavit, complaint, and associated documents to the appropriate federal law enforcement agency, pursuant to United States Code Title 8, Section 1373.

L. If the federal government notifies the County that it is unable to verify the immigration status of the occupant who is the subject of the complaint, the County shall take no further action on the complaint until a final verification from the federal government concerning the immigration status of the individual is received. At no point shall any County official attempt to make an independent determination of any alien's legal status, without verification from the federal government, pursuant to United States Code Title 8, Section 1373(c).

M. Upon the request of a dwelling unit owner or manager, the County Business License Department shall, pursuant to United States Code Title 8, Section 1373(c), verify with the federal government the lawful immigration status of an alien who has obtained an occupancy license and who resides or seeks to reside in the owner's dwelling unit. The penalties in this Section shall not apply in the case of a dwelling unit occupant whose status as an alien lawfully present in the United States has been verified by the federal government.

#### **SECTION 6. BUSINESS LICENSES, CONTRACTS, OR GRANTS**

The following shall be included in the Code of Ordinances as Section [00-006]:

Notwithstanding any other provision of this Ordinance, the County Business License Department and the County [Sheriff] shall enforce the requirements of this Ordinance as follows.

A. It is unlawful for any business entity to knowingly 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. An authorized representative of any business entity that applies for any business license in the County shall sign an affidavit, prepared by the County Attorney, affirming that the business entity does not knowingly utilize the services or hire any person who is an unauthorized alien.

B. An enforcement action shall be initiated by means of a written, signed complaint to the County Business License Department submitted by any County official, business entity, or County resident. The County Attorney shall prepare a complaint form for this purpose which states that the allegations made on the form purport to be a lawful affirmation and informs the complainant of the crime of false swearing, [State Code] § [xx-xx-xx], and the penalties thereof. A valid complaint must include an allegation which describes:

- (1) the business entity alleged to have violated this Section,
- (2) the individual employed by the business entity who is alleged to be an unauthorized alien,
- (3) the reasons for suspecting that the individual is an unauthorized alien,
- (4) the location of the employment of the unauthorized alien,
- (5) the dates of the alleged violation.

C. A complaint that alleges a violation on the basis of national origin, ethnicity, or race shall be deemed invalid and shall not be enforced.

D. Upon determination that a complaint is valid, the County Business License Department shall notify the business entity of the complaint and shall request identity information from the business entity regarding any employee alleged to be unauthorized aliens. The County Business License Department shall suspend the business licenses of any business entity that fails, within five business days after receipt of the request, to provide such information. Such suspension shall end when the requested information is provided. The County Business License Department shall also notify the individual alleged to be an unauthorized alien of the complaint and offer the individual an opportunity to provide any information supporting his authorization of employment in the United States. The County shall then submit identity and status information data required by the federal government to verify the authorization of employment in the United States of the individual, pursuant to United States Code Title 8, Section 1373(c). The County Business License Department shall also provide the business entity with an opportunity to contest the alleged violation by providing any other information to the County Business License Department.

E. If the federal government provides a tentative confirmation or non-confirmation of the individual's authorization of employment in the United States, the County shall immediately notify the business entity and the individual in writing and shall allow the business entity or the individual to provide additional information to request a secondary or additional verification by the federal government of the individual's authorization of employment in the United States, pursuant to United States Code Title 8, Section 1373(c). The individual and business entity must provide such additional information and request a secondary or additional verification within the time period stipulated by the federal government. If the federal government does not stipulate a time period, the individual and business entity must provide such information and request a secondary or additional verification within eight days.

F. If the federal government verifies with finality that the individual is an unauthorized alien, the County shall notify the business entity and the individual in writing.

G. The County Business License Department shall suspend the business licenses of any business entity that fails, within ten business days after notification under Subsection F, to correct a violation of this Section by taking one of the following actions:

- (1) The business entity terminates the unlawful worker's employment.
- (2) The business entity attempts to terminate the unlawful worker's employment, and such termination is challenged in a court of competent jurisdiction. The business entity shall be deemed to have corrected the violation if the business entity pursues the termination until a final judicial order is issued.

H. The suspension shall terminate one business day after a legal representative of the business entity submits to the County Business License Department a sworn affidavit stating that the violation has ended.

I. The affidavit shall include a description of the specific measures and actions taken by the business entity to correct the violation.

J. Where two or more employees of the business entity have been verified to be unauthorized aliens, a legal representative of the business entity shall submit to the County Business License Department, in addition to the prescribed affidavit, documentation acceptable to the County Attorney which confirms that the business entity has enrolled in the Basic Pilot Program and is using the Basic Pilot Program to verify the authorization of employment in the United States of all new employees hired by the business entity.

K. For a second or subsequent violation, the County Business License Department shall suspend all business licenses of the business entity for a period of thirty days. After the end of the suspension period, and upon receipt of the prescribed affidavit, the County Business License Department shall reinstate the business licenses. The County Business License Department shall forward the affidavit, complaint, and associated documents to the Bureau of Immigration and Customs Enforcement of the United States Department of Homeland Security, pursuant to United States Code Title 8, Section 1373.

L. The County Business License Department shall not suspend any business license of a business entity under this Section if, prior to the date of the alleged violation, the business entity had verified the authorization of employment in the United States of the employee concerned using the Basic Pilot Program.

M. If the federal government notifies the County that it is unable to verify the immigration status of an employee who described in a complaint under this Section, the County shall take no further action on the complaint with respect to that employee until a final verification from the federal government concerning the immigration status of the employee is received. At no point shall any County official attempt to make an independent determination of any individual's immigration status, without verification from the federal government, pursuant to United States Code Title 8, Section 1373(c).

N. All agencies of the County shall enroll and participate in the Basic Pilot Program.

O. As a condition for the 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 that the business entity has enrolled in the Basic Pilot Program and has used the Basic Pilot Program to verify the authorization of employment in the United States of all new employees hired by the business entity after enrollment in the Program.

#### **SECTION 7. JUDICIAL PROCESS**

The following shall be included in the Code of Ordinances as Section [00-007]:

A. Venue for Judicial Process. Any dwelling unit owner, occupant, business entity, or employee subject to a complaint and subsequent enforcement under this Ordinance may challenge the enforcement of this Ordinance with respect to such dwelling unit owner, occupant, business entity, or employee in the

[Lawful] County District Court, or in any other court of competent jurisdiction in accordance with applicable law.

B. Deference to federal determinations of immigration status. The determination of whether any individual is an alien unlawfully present in the United States, or whether any employee is an unauthorized alien shall be made by the federal government, pursuant to United States Code Title 8, Section 1373(c). A determination of the immigration status of an individual by the federal government shall create a rebuttable presumption as to that individual's immigration status in any challenge brought under Subsection A. The Court may take judicial notice of any verification of the immigration status of the individual previously provided by the federal government and may request the federal government to provide automated or testimonial verification pursuant to United States Code Title 8, Section 1373(c).

#### **SECTION 8. CONSTRUCTION AND SEVERABILITY**

The following shall be included in the Code of Ordinances as Section [00-008]:

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 citizens and aliens.

B. The County shall not construe this Ordinance to prohibit the rendering of emergency medical care, or any other public benefit mandated by federal or state law, or the reporting of a crime or criminal activity to any law enforcement agency.

C. If any part of provision of this Ordinance is in conflict or inconsistent with applicable provisions of federal or state law, or is otherwise held to be invalid or unenforceable by any court of competent jurisdiction, such part of provision shall be suspended and superseded by such applicable laws or regulations, and the remainder of this Ordinance shall not be affected thereby.