

ORDINANCE NO. 1722, as amended

**AN ORDINANCE REPEALING
ORDINANCE NO. 1715 RELATING TO ILLEGAL
IMMIGRATION WITHIN THE CITY OF VALLEY PARK, MO,
AND ENACTING A NEW ORDINANCE IN LIEU THEREOF
RELATING TO THE EMPLOYMENT OF
ILLEGAL ALIENS WITHIN THE CITY OF VALLEY PARK, MO
AS AMENDED BY ORDINANCE 1724**

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF VALLEY PARK, MISSOURI, AS FOLLOWS:

Section One

Sections One, Two, Three and Four of Ordinance No. 1708 are hereby repealed.

Section Two

FINDINGS AND DECLARATION OF PURPOSE.

The people of the City of Valley Park find and declare:

- A. That state and federal law require that certain conditions be met before a person may be authorized to work in this country.
- B. That 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 of Valley Park.
- C. That unlawful employment of, and crime committed by, illegal aliens harms the health, safety and welfare of authorized US workers and legal residents in the City of Valley Park. Illegal immigration leads to higher crime rates, subjects our hospitals to fiscal hardship and legal residents to substandard quality of care, contributes to other burdens on public services, increasing their costs and diminishing their availability to legal residents, and diminishes our overall quality of life and provides concerns to the security and safety of the homeland.

- D. That the City of Valley Park is authorized to abate public nuisances and empowered and mandated by the people of Valley Park to abate the nuisance of illegal immigration by diligently prohibiting the acts and policies that facilitate illegal immigration in a manner consistent with federal law and the objectives of Congress.
- E. This Ordinance seeks to secure to those lawfully present in the United States and this City, whether or not they are citizens of the United States, the right to live in peace free of the threat of crime, to enjoy the public services provided by this City without being burdened by the cost of providing goods, support and services to aliens unlawfully present in the United States, and to be free of the debilitating effects on their economic and social well being imposed by the influx of illegal aliens to the fullest extent that these goals can be achieved consistent with the Constitution and Laws of the United States and the State of Missouri.
- F. The City shall not construe this Ordinance to prohibit the rendering of emergency medical care, emergency assistance, or legal assistance to any person.

Section Three

DEFINITIONS.

When used in this chapter, 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:

- A. "Business entity" means 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.
 - (1) The term business entity shall include, but not be limited to, self-employed individuals, partnerships, corporations, contractors, and subcontractors.
 - (2) 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 a business license, and any business entity that is operating unlawfully without such a business license.

- B. "City" means the City of Valley Park, Missouri.
- C. "Contractor" means a person, employer, 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.
- D. "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 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.
- E. "Unlawful worker" means 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).
- F. "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.
- G. "Basic Pilot Program" means 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 Four

BUSINESS PERMITS, CONTRACTS, OR GRANTS.

- 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 license 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 Valley Park Code Enforcement Office shall enforce the requirements of this section.

- (1) An enforcement action shall be initiated by means of a written signed complaint to the Valley Park Code Enforcement Office 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 Valley Park Code Enforcement Office shall, within three (3) business days, request identify information from the business entity regarding any persons alleged to be unlawful workers. The Valley Park Code Enforcement Office shall suspend the business permit of any business entity which fails, within three (3) business days after receipt of the request, to provide such information.
- (4) The Valley Park Code Enforcement Office shall suspend the business license of any business entity which fails to correct a violation of this section within three (3) business days after notification of the violation by the Valley Park Code Enforcement Office.
- (5) The Valley Park Code Enforcement Office shall not suspend the business license of a business entity if prior to the date of the violation, the business entity had verified the work authorization of the alleged unlawful worker(s) using the Basic Pilot Program.
- (6) The suspension shall terminate one (1) 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 of the unlawful workers related to the complaint.

- (b) Where two or more of the unlawful workers were verified by the federal government to be unauthorized aliens, the legal representative of the business entity shall submit to the Valley Park Code Enforcement Office, 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 granted to the business entity.
- (7) For a second or subsequent violation, the Valley Park Code Enforcement Office shall suspend the business permit of a business entity for a period of twenty (20) days. After the end of the suspension period, and upon receipt of the prescribed affidavit, the Valley Park Code Enforcement Office shall reinstate the business permit. The Valley Park Code Enforcement Office shall forward the affidavit, complaint, and associated documents to the appropriate federal enforcement agency, pursuant to United States Code Title 8, section 1373. In the case of an unlawful worker disqualified by state law not related to immigration, the Valley Park Code Enforcement Office shall forward the affidavit, complaint, and associated documents to the appropriate state 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 confirming its enrollment and participation in the Basic Pilot Program.

Section Five

IMPLEMENTATION AND PROCESS

- A. Prospective Application Only. The default presumption with respect to Ordinances of the City of Valley Park – that such Ordinances apply only prospectively – shall pertain to the provisions of this Ordinance, which shall apply only to employment contracts, agreements to perform service or work, and agreements to provide a certain product in exchange for valuable consideration that are entered into or renewed after the date that this Ordinance becomes effective and any judicial

injunction prohibiting its implementation is removed.

- B. Correction of Violations—Employment of Unlawful Workers. The correction of a violation with respect to the employment of an unlawful worker shall include any of the following actions:
- (1) The business entity terminates the unlawful worker's employment.
 - (2) The business entity, after acquiring additional information from the worker, requests a secondary or additional verification by the federal government of the worker's authorization, pursuant to the procedures of the Basic Pilot Program. While this verification is pending, the three business day period described in Section 4.B.(4) shall be tolled.
 - (3) The business entity attempts to terminate the unlawful worker's employment and such termination is challenged in a Court of the State of Missouri. While the business entity pursues the termination of the unlawful worker's employment in such forum, the three business day period described in Section 4.B(4) shall be tolled.
- C. Procedure if Verification is Delayed. If the federal government notifies the City of Valley Park that it is unable to verify whether an employee is authorized to work in the United States, the City of Valley Park shall take no further action on the complaint until a verification from the federal government concerning the status of the individual is received. At no point shall any city 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, Subsection 1373(c).
- D. Deference to Federal Determinations of Status. The determination of whether a tenant of a dwelling is lawfully present in the United States, and the termination of whether a worker is an unauthorized alien shall be made by the federal government, pursuant to United States Code Title 8, Subsection 1373(c). A determination of such status of an individual by the federal government shall create a rebuttal presumption as to that individual's status in any judicial proceedings brought pursuant to this Ordinance. The Court may take judicial notice of any verification 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, Subsection 1373(c).

- E. Venue for Judicial Process. Any business entity subject to a complaint and subsequent enforcement under this Ordinance, or any employee of such a business entity, may challenge the enforcement of this Ordinance with respect to such entity or individual before the Board of Adjustment of the City of Valley Park, Missouri, subject to the right of appeal to the St. Louis County Circuit Court. Such an entity or individual may alternatively challenge the enforcement of this Ordinance with respect to such entity or individual in any other Court of competent jurisdiction in accordance with applicable law, subject to all rights of appeal.

Section Six

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

Section Seven

This Ordinance shall become effective from and after its passage and approval by the Mayor in repealing Ordinance 1708 and Ordinance 1715, provided that the enforcement of the provisions contained within Sections Two, Three, Four, Five and Six shall be effective upon the termination of any restraining orders or injunctions now in force in Cause No. 06CC-3802 now pending in St. Louis County, Missouri, in Division 13.