

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

In the Matter of An Ordinance	)	
Regulating the Employment of	)	ORDINANCE NO. 2008-6
Unauthorized Aliens	)	
_____	)	

The Board of County Commissioners for Columbia County, Oregon ordains as follows:

**SECTION 1. TITLE.**

This Ordinance shall be known as Ordinance No. 2008-6. Exhibit "A", which is attached hereto and incorporated herein by this reference, shall be known as the "Columbia County Employment of Unauthorized Aliens Ordinance".

**SECTION 2. AUTHORITY.**

This Ordinance is adopted under the authority of ORS 203.035 through ORS 203.065.

**SECTION 3. PURPOSE.**

The purpose of this Ordinance is to implement the intent of the voters as demonstrated by the passage of Columbia County initiative Measure 5-190, entitled "Employment of Unauthorized Aliens" (the "Act"), on November 4, 2008. This Ordinance is intended to amend the Act to correct several inadvertent errors in the Act as well as to correct several other legal problems in the Act while preserving the intent of the voters.

**SECTION 4. ADOPTION/AMENDMENT.**

Ordinance No. 2008-6 is hereby adopted. The Act is hereby amended as shown in Exhibit "A" which is attached hereto and is incorporated herein by this reference. The Act, as amended by this Ordinance, shall be known as the Columbia County Employment of Unauthorized Aliens Ordinance.

**SECTION 5. SEVERABILITY.**

If any provision of this Ordinance, including Exhibit "A", is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the remaining portions thereof.

**SECTION 6. REPEALER.**


This Ordinance shall be automatically repealed if Columbia County initiative Measure 5-190 is for any reason overturned by a court of competent jurisdiction.


SECTION 7. EMERGENCY CLAUSE.

This Ordinance being immediately necessary to maintain the public health, safety and welfare, an emergency is declared to exist and this Ordinance shall take effect on the effective date of Initiative Measure 5-190.

Dated this 17<sup>th</sup> day of December, 2008.


BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

By:   
Anthony Hyde, Chair

By:   
Joe Corsiglia, Commissioner

By:   
Rita Bernhard, Commissioner

Attest:  
By:   
Recording Secretary

Approved as to form  
By:   
Office of County Counsel

First Reading: 12-17-08  
Second Reading: 12-17-08  
Effective Date: 2-2-09

EXHIBIT "A"

COLUMBIA COUNTY

**EMPLOYMENT OF UNAUTHORIZED  
ALIENS ORDINANCE**

Adopted by Ordinance No. 2008-6  
Effective 2-2-09

## **COLUMBIA COUNTY EMPLOYMENT OF UNAUTHORIZED ALIENS ORDINANCE**

**SECTION I. DEFINITIONS.** As used in this Ordinance, the following terms shall have the meaning given, below.

- A. "Agency" means any agency, department, board or commission of this County, city or town that issues a license for purposes of operating a business in this County, or that issues a building permit.
- B. "Basic Pilot Program" means the basic employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or its successor program.
- C. "Building permit" means a permit issued under the State building code as defined in ORS 455.010(8).
- D. "Contractor" means a person or entity required to be licensed by the Oregon Construction Contractors Board under Oregon law.
- E. "County" means Columbia County, Oregon.
- F. "Employee" means any person who performs employment services for an employer pursuant to an employment relationship between the employee and employer.
- G. "Employer" means:
  - 1. Any individual or type of organization that transacts business in this County, that has a license issued by an agency in this County;
  - 2. Any individual or type of organization that holds a building permit in this County, and that employs one or more individuals who perform employment services in this state; and
  - 3. The state, any political subdivision of this state, and self-employed persons that otherwise meet the definition of "Employer".
- H. "Intentionally" has the same meaning prescribed in ORS 161.085.
- I. "Knowingly employ an unauthorized alien" means the actions described in 8 United States Code Section 1324a. This term shall be interpreted consistently with 8 United States Code Section 1324a and any applicable federal rules and regulations.

- J. "License" means any agency permit, certificate, approval, registration, charter or similar form of authorization that is required by law and that is issued by any agency for the purposes of operating a business in the County, including a) a building permit issued by the County or any city within the County; and b) any business license.
- K. "Unauthorized alien" means an alien who does not have the legal right or authorization under federal law to work in the United States as described in 8 United States Code, Section 1324a(h)(3).

**SECTION II. EMPLOYMENT OF UNAUTHORIZED ALIENS; PROHIBITION, VIOLATION, CLASSIFICATION, LICENSE SUSPENSION AND REVOCATION**

- A. Employment of Unauthorized Alien(s) Prohibited. An employer shall not intentionally employ an unauthorized alien or knowingly employ an unauthorized alien.
- B. Investigation. On receipt of a complaint that an employer allegedly intentionally employs an unauthorized alien, or knowingly employs an unauthorized alien, the County Counsel shall investigate whether the employer has violated Section IIA. When investigating a complaint, the County Counsel shall verify the work authorization of the alleged unauthorized alien with the federal government pursuant to 8 United States Code Section 1373(c). The County Counsel shall not attempt to independently make a final determination on whether an alien is authorized to work in the United States. An alien's immigration status or work authorization status shall be verified with the federal government pursuant to 8 United States Code Section 1373(c).
- C. Required Notification. If after an investigation, the County Counsel determines that the complaint is not frivolous:
  - 1. The County Counsel shall notify the United States Immigration and Customs Enforcement of the unauthorized alien; and
  - 2. The County Counsel shall notify the local law enforcement agency of the unauthorized alien.
  - 3. The County Counsel shall bring an action for violation of Section IIA, pursuant to Section IID.
- D. Hearing Procedure. An action for a violation of Section IIA shall be brought against the employer by the County Counsel in an administrative hearing before the Board of County Commissioners. The hearing shall be conducted as a quasi-judicial hearing. Appeals shall be to the Columbia County Justice Court, shall be *de novo*, and shall be considered an action at law. Appeals

from the Columbia County Justice Court shall be in accordance with state statutes governing appeals from the Columbia County Justice Court.

- E. Expedited Process. For any action before the Board of County Commissioners and appeals to the Justice Court or Circuit Court under this section, the Board of County Commissioners or the Court shall expedite the action, including assigning the hearing at the earliest practicable date.
- F. Violations/Penalties. On a finding of a violation of Section IIA:
1. For a first violation during a three year period that is a knowing violation the Board of County Commissioners or the Court:
    - a. Shall order the employer to terminate the employment of all unauthorized aliens.
    - b. Shall order the employer who is a contractor to be fined the sum of \$10,000.
    - c. Shall order the employer to be subject to a three year probationary period. During the probationary period the employer shall file quarterly reports with the County Counsel for each new employee who is hired by the employer.
    - d. Shall order the employer to file a signed sworn affidavit with the County Counsel within three business days after the order is issued. The affidavit shall state that the employer has terminated the employment of all unauthorized aliens and that the employer will not intentionally or knowingly employ an unauthorized alien. The Board of County Commissioners or the Court shall order the appropriate agencies to suspend all licenses including building permits subject to this Ordinance that are held by the employer if the employer fails to file a signed sworn affidavit with the County Counsel within three business days after the order is issued. All licenses including building permits that are suspended shall remain suspended until the employer files a signed sworn affidavit with the County Counsel. The employer shall not be entitled to obtain new licenses including building permits until the employer files a sworn affidavit with the County Counsel and has terminated all unauthorized aliens. If a license is not necessary to operate the employer's business at the specific location where the unauthorized alien performed work, but a license is necessary to operate the employer's business in general, the licenses that are subject to suspension are all licenses that are held by the employer at the employer's primary place of business. On receipt of the Board of County Commissioners' or Court's order

and notwithstanding any other law, the appropriate agencies shall suspend the licenses according to the Board of County Commissioners' or Court's order. The Board of County Commissioners or Court shall send a copy of the Board of County Commissioners' or Court's order to the County Counsel.

- e. May order the appropriate agencies to suspend all licenses described in section IIF(1)(d), above, that are held by the employer for not to exceed ten business days. The Board of County Commissioners or Court shall base its decision to suspend on any evidence or information submitted to it during the proceedings and shall consider the following factors, if relevant:
  - (1) The number of unauthorized aliens employed by the employer.
  - (2) Any prior misconduct by the employer.
  - (3) The degree of harm resulting from the violation.
  - (4) Whether the employer made good faith efforts to comply with any applicable requirements.
  - (5) The duration of the violation.
  - (6) The role of the directors, officers or principals of the employer in the violation.
  - (7) Any other factors the Board of County Commissioners or Court deems appropriate.

- 2. For a first violation during a five year period that is an intentional violation of section IIA, the Board of County Commissioners or Court:
  - a. Shall order the employer who is a contractor to be fined the sum of \$10,000. This fine is not subject to suspension. This fine is mandatory.
  - b. Shall order the employer to terminate the employment of all unauthorized aliens.
  - c. Shall order the employer to be subject to a five year probationary period. During the probationary period the employer shall file quarterly reports with the County Counsel of

each new employee who is hired by the employer at the specific location where the unauthorized alien performed work.

- d. Shall order the appropriate agencies to suspend all licenses, including building permits and issue stop work orders on all pending building projects that are held by the employer for a minimum of ten days. The Board of County Commissioners or Court shall base its decision on the length of the suspension on any evidence or information submitted to it during the proceedings and shall consider the following factors, if relevant:
  - (1) The number of unauthorized aliens employed by the employer.
  - (2) Any prior misconduct by the employer.
  - (3) The degree of harm resulting from the violation.
  - (4) Whether the employer made good faith efforts to comply with any applicable requirements.
  - (5) The duration of the violation.
  - (6) The role of the directors, officers or principals of the employer in the violation.
  - (7) Any other factors the Board of County Commissioners or Court deems appropriate.
  
- e. Shall order the employer to file a signed sworn affidavit with the County Counsel. The affidavit shall state that the employer has terminated the employment of all unauthorized aliens and that the employer will not intentionally or knowingly employ an unauthorized alien. All licenses including building permits that are suspended under section IIF(2)(d), above, shall remain suspended until the employer files a signed sworn affidavit with the County Counsel. For purposes of this subsection the licenses including building permits that are subject to suspension are all licenses, including building permits that are held by the employer and that are necessary to operate the employer's business at any location the employer conducts work. On receipt of the Board of County Commissioners' or Court's order and notwithstanding any other law, the appropriate agencies shall suspend the licenses according to the Board of County Commissioners' or Court's order. The Board of County Commissioners or Court shall send a copy of



the order to the County Counsel and the County Counsel shall maintain the copy pursuant to section IIG.

3. For a second violation of section IIA during the period of probation, the Board of County Commissioners or Court shall order the appropriate agencies to permanently revoke all licenses that are held by the employer and that are necessary to operate the employer's business and permanently deny the employer the right to obtain licenses including building permits in the future. On receipt of the order and notwithstanding any other law, the appropriate agencies shall immediately revoke the licenses including building permits and shall not issue licenses including building permits to the employer in the future.
- G. Database. The County Counsel shall maintain copies of orders that are received pursuant to this Ordinance and shall maintain a database of the employers who have a first violation of section IIA and make the orders available on the County website.
- H. Judicial Notice. On determining whether an employee is an unauthorized alien, the Board of County Commissioners or Court shall consider only the federal government's determination pursuant to 8 United States Code Section 1373(c). The federal government's determination creates a rebuttable presumption of the employee's lawful status. The Board of County Commissioners or Court may take judicial notice of the federal government's determination and may request the federal government to provide automated or testimonial verification pursuant to 8 United States Code section 1373(c).
- I. Rebuttable Presumption. For purposes of this Ordinance proof of verifying the employment authorization of an employee through the Basic Pilot Program creates a rebuttable presumption that an employer did not intentionally employ an unauthorized alien or knowingly employ an unauthorized alien.
- J. Affirmative Defense. For purposes of this Ordinance an employer who establishes that it has complied in good faith with the requirements of 8 United States Code section 1324b establishes an affirmative defense that the employer did not intentionally or knowingly employ an unauthorized alien.

SECTION III.            EMPLOYER ACTIONS; FEDERAL OR STATE LAW COMPLIANCE.

This Ordinance shall not be construed to require an employer to take action that the employer believes in good faith would violate federal or state law.

SECTION IV.            VERIFICATION OF EMPLOYMENT ELIGIBILITY; BASIC PILOT PROGRAM.

After the effective date of this Ordinance every employer, after hiring an employee, shall verify the employment eligibility of the employee through the Basic Pilot Program.

SECTION V.            EMPLOYER NOTICE.

On or before the effective date of this Ordinance, the County shall provide a notice to every employer that is required to withhold tax. The notice shall explain the requirements of this Ordinance, including the following:

- A. A new County law prohibits employers from intentionally employing an unauthorized alien or knowingly employing an unauthorized alien.
- B. For a first violation of this new County law during a three year period that is a knowing violation, the Board of County Commissioners or Court will order the appropriate licensing agencies to suspend all licenses including building permits held by the employer unless the employer files a signed sworn affidavit with the County Counsel within three business days. The filed affidavit must state that the employer has terminated the employment of all unauthorized aliens and that the employer will not intentionally or knowingly employ an unauthorized alien. A license that is suspended will remain suspended until the employer files a signed sworn affidavit with the County Counsel. A copy of the order will be made available on the County's website.
- C. For a first violation of this new County law during a five year period that is an intentional violation the Board of County Commissioners or Court will order the appropriate licensing agencies to suspend all licenses held by the employer for a minimum of ten days. The employer must file a signed sworn affidavit with the County Counsel. The filed affidavit must state that the employer has terminated the employment of all unauthorized aliens and that the employer will not intentionally or knowingly employ an unauthorized alien. A license that is suspended will remain suspended until the employer files a signed sworn affidavit with the County Counsel . A copy of the order will be made available on the County's website.

- D. For a second violation of this new County law the Board of County Commissioners or Court will order the appropriate licensing agencies to permanently revoke all licenses and permits that are held by the employer.
- E. Proof of verifying the employment authorization of an employee through the Basic Pilot Program will create a rebuttable presumption that an employer did not violate the new County law.
- F. After the effective date of the Ordinance every employer, after hiring an employee, is required to verify the employment eligibility of the employee through the Basic Pilot Program.
- G. Instructions for the employer on how to enroll in the Basic Pilot Program .

SECTION VI. NO NEW TAXES.

The County shall not impose any new tax as a result of this Ordinance. Funding for this Ordinance shall be taken from the general fund. The County may not cut law enforcement, road department or parks and recreation funding to pay for any costs associated with the implementation of this Ordinance. The income generated from fines imposed under this Ordinance shall first be applied to costs of implementing this Ordinance, and all surplus shall be applied to law enforcement through the Columbia County Sheriff's Office.

SECTION VII. ENFORCEMENT.

- A. Official Misconduct. All County officials are required to enforce and uphold this Ordinance. Willful refusal to follow the terms of this Ordinance and perform the duties assigned herein, shall constitute official misconduct and shall be dealt with accordingly.
- B. Special County Counsel. All citizens who are licensed to practice law in the state of Oregon pursuant to ORS 203.145(2), have the right to petition the Columbia County Justice Court for appointment as a special county counsel County Counsel, to be paid out of the general fund at a rate no less than 1.5 times the hourly rate of the most junior County Counsel and may perform enforcement functions in the event any County official fails to enforce this Ordinance as required.