

ORDINANCE NO. 934

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LANCASTER, CALIFORNIA, ADDING CHAPTER 5.50 TO THE LANCASTER MUNICIPAL CODE RELATING TO THE EMPLOYMENT OF UNDOCUMENTED WORKERS

WHEREAS, state and federal law require that certain conditions be met before a person may be authorized to work in the United States; and

WHEREAS, undocumented workers, as defined herein, do not generally satisfy such conditions as a matter of law when present in the City of Lancaster (the “City”); and

WHEREAS, the employment of undocumented workers harms the health, safety and welfare of the residents of the City because illegal immigration leads to higher crime rates, subjects 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 overall quality of life; and

WHEREAS, this Ordinance seeks to secure to those lawfully present in the United States and the City, whether or not they are citizens of the United States, the right to live in peace free from the threat of crime, to enjoy public services provided by the City without being burdened by the cost of providing goods, support and services to workers unlawfully present in the United States, and to be free of the debilitating social and economic effects caused by illegal immigration, all to the extent consistent with the laws of the United States and the State of California; and

WHEREAS, the City Council of the City has determined that it is in the public interest to add Chapter 5.50 to the Lancaster Municipal Code in order to require that employers within the City verify the employment eligibility of employees by using the e-verify program.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LANCASTER DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 5.50 (“Employment of Undocumented Workers”) is hereby added to the Lancaster Municipal Code to read as set forth in Exhibit “A” attached hereto and incorporated herein by reference.

Section 2. If any section, subsection, sentence, clause, phrase or portion of this Ordinance, including Exhibit “A”, is held for any reason to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Lancaster hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

Section 3. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard and this Ordinance shall take effect 30 days after its final passage.

I, Geri K. Bryan, CMC, City Clerk of the City of Lancaster, do hereby certify that the foregoing ordinance was regularly introduced and placed upon its first reading on the _____ day of _____, 2009, and placed upon its second reading and adopted at a regular meeting of the City Council on the _____ day of _____, 2009 by the vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

GERI K. BRYAN, CMC
City Clerk
City of Lancaster

R. REX PERRIS
Mayor
City of Lancaster

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss
CITY OF LANCASTER)

CERTIFICATION OF ORDINANCE
CITY COUNCIL

I, _____, _____ City of Lancaster, California, do hereby certify that this is a true and correct copy of the original Ordinance No. 934 for which the original is on file in my office.

WITNESS MY HAND AND THE SEAL OF THE CITY OF LANCASTER, on this _____ day of _____, _____.

(seal)

**EXHIBIT “A”
ORDINANCE NO. 934**

CHAPTER 5.50

EMPLOYMENT OF UNDOCUMENTED WORKERS

Sections:

5.50.010	Definitions.
5.50.020	Knowingly Employing Undocumented Workers.
5.50.030	Verification of Employment Eligibility.
5.50.040	Violation—Penalty.
5.50.050	Appeal.
5.50.060	Severability.

12.28.010 Definitions.

Except as otherwise expressly set forth herein, the following words and terms as used in this chapter shall have the following meanings:

“City clerk” means the city clerk of the city and his or her designee(s).

“City manager” means the city manager of the city or any other city officer or employee responsible for administering this chapter.

“Employ” means hiring an employee after December 31, 2009.

“Employee” means any person who provides services or labor within the city for an employer for wages or any other remuneration. An independent contractor is not an employee for the purpose of this chapter.

“Employer” means any person that is transacting business in the city and that employs one or more employees in the city.

“E-verify program” means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, as amended, and operated jointly by the United States Department of Homeland Security and the United States Social Security Administration, or a successor electronic verification of work authorization program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees pursuant to the Immigration Reform and Control Act of 1986, Pub. L. No. 99-603.

“Independent contractor” means any individual or entity that carries on an independent business, that contracts to do a piece of work according to the individual’s or entity’s own means and methods and that is subject to control only as to results. Whether

an individual or entity is an independent contractor is determined on a case-by-case basis through various factors, including whether the individual or entity:

- (a) Supplies the tools or materials.
- (b) Makes services available to the general public.
- (c) Works or may work for a number of clients at the same time.
- (d) Has an opportunity for profit or loss as a result of labor or service provided.
- (e) Invests in the facilities for work.
- (f) Directs the order or sequence in which the work is completed.
- (g) Determines the hours when the work is completed.

“Knowingly employ an undocumented worker” means the actions described in Section 1324a of Title 8 of the United States Code. This term shall be interpreted consistently with Section 1324a of Title 8 of the United States Code and any applicable federal rules and/or regulations.

“Person” means all domestic and foreign corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, businesses, trusts, societies and individuals transacting and carrying on any business in the city other than as an employee.

“Transacting business” means engaging in any activity for profit within the city, including, but not limited to providing goods or services, whether the business is physically located within the city or located outside the city with a substantial amount of business transacted within city limits.

“undocumented worker” means a worker who does not have the legal right or authorization under federal law to work in the United States as described in Section 1324a(h)(3) of Title 8 of the United States Code.

5.50.020 Knowingly Employing Undocumented Workers.

An employer shall not knowingly employ an undocumented worker. If, in the case when an employer uses a contract, subcontract, or other independent contractor agreement to obtain labor of workers in the city, the employer knowingly contracts with an undocumented worker or with a person who employs an undocumented worker to perform the labor, the employer violates this Section 5.50.020.

5.50.030 Verification of Employment Eligibility.

(A) After December 31, 2009, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the e-verify program.

(B) An employer shall maintain records sufficient to establish that it has complied with the requirement set forth in subsection (A) of this Section 5.50.030 with respect to each employee and shall retain such records for the duration of such employee's employment; provided, however, that an employer shall retain and maintain such records for a longer period of time if required by an applicable state or federal law, regulation or rule. The records maintained pursuant to this Section 5.50.030 shall be immediately made available to the city for inspection and audit upon written notice to the employer by the city manager.

5.50.040 Violation—Penalty.

(A) On a finding of a first violation of this chapter, the city manager shall demand that the employer terminate the employment of all undocumented workers in the city and demand that the employer sign a declaration under penalty of perjury within ten (10) business days stating that the employer has terminated the employment of all undocumented workers in the city and that the employer will comply with the requirements of this chapter.

(B) On a finding of a second violation of this chapter, the city manager may revoke any license that has been issued to and that is held by an employer pursuant to Title 5 of this code, including, without limitation, a business license issued pursuant to Chapter 5.04. For the purpose of this Section 5.50.040, a second violation shall be a violation that occurs within twenty-four (24) months of a finding of a first violation.

(C) Notwithstanding any other provision of this code, the penalty for a violation of this Chapter 5.50 shall be limited to the penalties set forth in this Section 5.50.040.

5.50.050 Appeal.

(A) If an employer is aggrieved by any decision of the city manager regarding the finding of a violation or the revocation of a license issued pursuant to Title 5 of this code, the employer may appeal the decision within ten (10) calendar days from the date of the city manager's decision. The notice of appeal must be in writing, indicate a return address, specify the basis for the appeal in detail and be timely filed with the city clerk. If the deadline falls on any day city hall is closed, then the deadline shall be extended until the next regular business day.

(B) As soon as practicable after receiving the written notice of appeal, the city clerk shall fix a date, time and place for hearing before a hearing officer. Written notice of the time and place for the hearing may be served by first class mail, at the return address indicated on the written notice of appeal. Service of the written notice of the time and place for the hearing must be made at least ten (10) days prior to the date of the hearing.

(C) The failure of any person to receive the written notice of the time and place for the hearing shall not affect the validity of any proceedings under this chapter. Service by first class mail, postage prepaid shall be effective on the date of mailing.

(D) Failure of any person to file an appeal in accordance with the provisions of this section shall constitute a waiver of that person's rights to an appeal. If no appeal is filed, the city manager's decision shall be deemed a final administrative order.

(E) A hearing officer shall be designated by the city clerk for all appeal hearings under this chapter. The respondent may request the city clerk recuse a hearing officer for reasons of actual prejudice against the party's cause. The hearing officer shall conduct an orderly fair hearing and accept evidence on which persons would commonly rely in the conduct of their ordinary business affairs.

(F) The city clerk shall establish all appropriate administrative regulations for implementing this chapter, conducting hearings and rendering decisions pursuant to this section.

(G) The hearing officer shall make findings based on the record of the hearing and make a written decision based on the findings. The city shall preserve all exhibits submitted by the parties and shall serve the decision by first class mail on the appellant within ten (10) working days after the hearing. The decision of the hearing officer reversing the city manager's decision to impose a penalty under Section 5.40.040 of this Chapter shall be final and conclusive. The decision of the hearing officer affirming the city manager's decision to impose a penalty under Section 5.40.040 of this Chapter may be appealed by the employer submitting a notice of appeal in accordance with the uniform appeal procedure set forth in Chapter 2.44.

5.50.060 Severability.

This Chapter and the various parts, sections and clauses thereof are declared severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid, the remainder of this Chapter shall not be affected thereby. The City Council declares that it would have passed this Chapter and each part thereof, regardless of the fact that one or more parts thereof be declared unconstitutional or invalid.