

ORDINANCE NO. 2011-1014

**AN ORDINANCE AMENDING AND SUPERSEDING WASHINGTON COUNTY
CODE TITLE 3, ADDING CHAPTER 5**

WHEREAS, there are unauthorized aliens, as defined in 8 U.S.C. § 1324a (h) (3) working in Washington County; and

WHEREAS, some of the unauthorized aliens commit crimes while living and working in Washington County, which adversely affects the victims of said crimes and costs Washington County moneys spent to incarcerate unauthorized aliens and hold them for the Immigrations and Customs Enforcement Agency (“ICE”), which decides whether or not it will deport the individual in question; and

WHEREAS, some of the tax moneys that are paid by legal residents of Washington County, are being used for things related to unauthorized aliens, as defined in 8 U.S.C. § 1324a (h) (3), thus depriving the citizens of Washington County, who pay taxes, the intended benefit of their tax dollars; and

WHEREAS, the United States government currently provides an online status verification system named E-Verify that allows businesses to verify a potential employee’s authorization to be employed in the United States under federal law; and

WHEREAS, businesses do not have to pay to participate in the E-Verify system; and

WHEREAS, the U.S. Supreme Court, in the case *Chamber of Commerce v. Whiting*, 131 S.Ct. 1968 (2011), recently held that local governments may require businesses to use E-Verify as long as the only consequence for not doing so involves licensure; and

WHEREAS, this ordinance complies with *Whiting*, in that it simply requires businesses that receive a business license from Washington County to use E-Verify.

WHEREAS, ensuring that businesses only hire authorized workers is an important part of resolving negative effects of illegal immigration.

NOW, THEREFORE the County Legislative Body of Washington County ordains as follows:

1. Statutory Authority
2. Purpose of Provisions
3. Findings
4. Section 3-5 of the Washington County Code
5. Prior Ordinances, Resolutions, Policies, and Actions Superseded
6. Effective Date

1. Statutory Authority

The statutory authority for enacting this ordinance is Utah Code Annotated Sections 17-53-208, 17-53-223, 17-53-227.

2. Purpose of Provisions

The purpose of this ordinance is to require businesses that receive a business license from Washington County to use E-Verify to verify any new employee's authorization to work in the United States.

3. Findings

- A. There are unauthorized aliens, as defined in 8 U.S.C. § 1324a (h) (3) working in Washington County.
- B. Some of the unauthorized aliens commit crimes while living and working in Washington County, which adversely affects the victims of said crimes and costs Washington County moneys spent to incarcerate unauthorized aliens and hold them for the Immigrations and Customs Enforcement Agency ("ICE"), which decides whether or not they will deport the individual in question.
- C. Some of the tax moneys that are paid by legal residents of Washington County, are being used for things related to unauthorized aliens, as defined in 8 U.S.C. § 1324a (h) (3), thus depriving the citizens of Washington County, who pay taxes, the intended benefit of their tax dollars.
- D. The United States government currently provides an online status verification system named E-Verify that allows businesses to verify a potential employee's authorization to be employed in the United States under federal law.
- E. Businesses do not have to pay to participate in the E-Verify system.
- F. The U.S. Supreme Court, in the case *Chamber of Commerce v. Whiting*, 131 S.Ct. 1968 (2011), recently held that federal law does not preempt a state from require businesses to use E-Verify as long as the only consequence for not doing so involves licensure status.
- G. This ordinance complies with *Whiting*, in that it simply requires businesses that receive a business license from Washington County to participate in the E-Verify program and the consequence for not doing so only involves suspension of a county-issued business license.

- H. Steps to ensure that businesses only hire authorized workers are an important part of resolving negative effects of illegal immigration, and E-Verify is one of those steps.

4. Sections 3-5 of the Washington County Code

3-5: Washington County Code Title 3, Chapter 5 Status Verification

3-5-1: Definitions:

- A. In addition to the terms below, this Chapter adopts the definitions contained in Section 3-1-1 of the Washington County Code concerning business licensure.
- B. Business License: A county business license issued by the Washington County Clerk-Auditor's office.
- C. Employee: For purposes of this section, any person for whom a business must complete a U.S. Department of Homeland Security Form I-9, Employment Eligibility Verification ("I-9 Form") is an employee.
- D. Status Verification System: An online system operated by the U.S. government at no cost to employers which allows businesses to verify a potential employee's authorization to be employed under federal law. E.g. E-Verify.

3-5-2: Status Verification Requirement

- A. Each Place of Business within the unincorporated areas of Washington County shall verify the employment eligibility of each new employee, within the first three days the employee begins employment.
- B. In order to verify employment eligibility, each Place of Business must use a current Status Verification System operated by the U.S. government, e.g. E-Verify.
- C. This Chapter shall not be construed to require an employer to take any action which does conflict, or which the employer in good faith believes would conflict, with state or federal law.
- D. This Chapter shall be enforced without regard to race, religion, gender, ethnicity, or national origin.
- E. If a Place of Business fails to comply with this Chapter, it shall be ordered to come into compliance. Additionally, its business license shall be suspended for:
 - i. A span of zero to ten (0 – 10) days for the first instance;

- ii. A span of ten to twenty (10 – 20) days for the second instance; and
- iii. A span of thirty (30) days to a permanent suspension for a third instance.
- iv. For a second or third failure to comply, the failure must have occurred after a decision was issued on the previous instance. In other words, if a Place of Business fails to use a status verification system for ten employees and this evidence is brought before a hearing officer as outlined below, that failure to comply constitutes a first instance of failure to comply and not a first, second, third, . . . and tenth instances.

3-5-3 Enforcement

A. Certification by Business

Each time that a person applies for a business license from Washington County, that person shall certify that the business is operating on compliance with this Chapter. The certification must be made on a form provided by the County Clerk/Auditor's Office.

B. County Investigation

1. The Clerk/Auditor's Office may request that a Place of Business show evidence that it is complying with this Chapter. Such a request may be based on some suspicion of non-compliance or may be in adherence with a policy adopted by the Clerk/Auditor requiring periodic inspection of documents
2. After the Clerk/Auditor's Office has received documentation from a Place of Business, if it determines there is some reasonable suspicion that a Place of Business is not complying with this Chapter, the Clerk/Auditor's Office shall conduct a more in depth investigation. If, upon completion of the investigation, the Clerk/Auditor's Office feels there is sufficient evidence of non-compliance, it shall turn the information over to the Washington County Attorney's Office.
3. No investigation shall be conducted if based solely on a worker's or employer's race, religion, gender, ethnicity, and/or national origin.

C. Citizen Complaint

1. Citizens may submit complaints which will be the basis for the Clerk/Auditor's office beginning an investigation.
2. All citizen complaints must be signed and contain the address and telephone number of the citizen complainant.

3. To provide the basis of an investigation, a citizen complaint must not be based solely on a worker's or employer's race, religion, gender, ethnicity, and/or national origin.
4. It is a violation of law to file a frivolous complaint. Someone who files a frivolous complaint shall be guilty of a Class C Misdemeanor.
5. A citizen complaint must be on a form approved by the Clerk/Auditor's Office. The form shall, at a minimum, contain space for:
 - i. The name and address of the Place of Business;
 - ii. The name of the alleged undocumented worker;
 - iii. The cause for suspicion that worker is undocumented;
 - iv. The cause for suspicion that the Place of Business did not use a Status Verification System to verify the worker's authorization to be employed;
 - v. The complainant's name, address, and telephone number; and
 - vi. The complainant's signature.
6. The citizen complaint form must contain prominent notice that:
 - i. No investigation will be undertaken if the cause for suspicion is based solely on the worker's or employer's race, religion, gender, ethnicity, and/or national origin;
 - ii. Only a signed and legible complaint may provide the basis of an investigation; and
 - iii. Frivolous complaints may result in the complainant being charged with a Class C Misdemeanor.

D. Administrative Hearing

1. The County Commission shall appoint a member of the community to act as a hearing officer regarding this Chapter.
 - i. The hearing officer shall be appointed for a two-year term and may be appointed as many consecutive terms as the commission sees fit.

- ii. The hearing officer shall be paid a fair hourly wage for services rendered unless he/she is an elected county official or an employee of the county.
2. If the County Attorney's Office concludes that there is sufficient evidence to show a violation of this Chapter by a clear and convincing standard of proof, then it may file a formal complaint with the hearing officer. The complaint shall be supported with documentary evidence marked as exhibits.
3. Within twenty-one days, the Place of Business may submit to the hearing officer evidence and briefs containing argument which refute the evidence put forward by the County Attorney's Office. The Place of Business may also request a hearing.
4. If no hearing is requested, the hearing officer shall review everything submitted and make a determination.
5. If a hearing is requested, the hearing officer shall schedule a hearing within thirty days of receiving the request. All evidence must be submitted by both the County and the Place of Business at least ten days before the scheduled hearing.
 - i. The hearing officer shall preside over the hearing.
 - ii. The hearing shall:
 - a. Include opening and closing statements by both sides. As the burden of proof lies with the County Attorney's Office, it shall give the first statement;
 - b. Include a time for both sides to present their evidence. Witnesses may be called, however their attendance is voluntary. A witness shall only be permitted to present evidence if she/he is willing to be cross examined. (The County is encouraged to call witnesses so that they may be cross examined and the hearing officer may evaluate their reliability. If a witness is not called and only an affidavit is submitted, the hearing officer may inquire as to why the witness did not give live testimony. The hearing officer shall take into account a witness's not testifying at the hearing in making a determination.);

c. Be recorded by audio means.

iii. The Utah Rules of Evidence shall not apply at the hearing.

6. A Place of Business may choose to have an attorney represent it before and/or at the hearing.
7. Standard of Proof: The County Attorney's Office has the burden of showing, by clear and convincing evidence, that the Place of Business in question has violated this Chapter by failing to use a current Status Verification System on employees hired subsequent to the effective date of this statute or the day the Place of Business hired its first employee, whichever is later.
8. Written decision: The hearing officer shall consider the evidence presented and issue a decision as to whether the County Attorney's Office has met its burden of proof. The decision must be in writing and state the reasons for the decision. The decision shall be issued within fourteen days of the submission of evidence by the Place of Business or the hearing, if one is requested. If a business license is suspended, the written decision shall clearly state the dates the suspension begins and ends.

E. Appeal:

1. If the Place of Business's license is suspended due to the hearing officer's decision, the Place of Business may file a written request for appeal to the County Commission within ten days of issuance of the decision or before the suspension begins, whichever is later. The appeal shall state the reasons for the appeal.
2. An appeal will automatically stay a suspension from occurring until the appeal has been resolved.
3. The County Attorney's Office shall have fourteen days to file a response to the appeal. The Place of Business shall then have seven days to file a response.
4. The County Commission shall review the written decision, the documents filed, and the audio recording of the hearing if a hearing was held. No hearing shall be held.
5. Burden of Proof: The County Commission will only overturn the hearing officer's decision if it finds that the hearing officer abused his/her discretion or made a clear error in reaching a conclusion.

6. Written Decision: The County Commission shall issue a written decision explaining its decision. If a suspension is still appropriate, the commission decision shall clearly state the dates the suspension begins and ends.

5. Prior Ordinances, Resolutions, Policies, and Actions Superseded

This ordinance supersedes all prior ordinances, resolutions, policies, and actions of the Washington County Board of County Commissioners to the extent that the provisions of such prior ordinances, resolutions, policies, or actions are in conflict with this ordinance. In all other respects, such prior ordinances, resolutions, policies, and actions shall remain in full force and effect.

6. Effective Date

This ordinance takes effect sixty (60) days after its passage. Following its passage but prior to the effective date, a copy of the ordinance shall be deposited with the County Clerk and a short summary of the ordinance shall be published in a newspaper of general circulation within the County as required by law.

APPROVED AND ADOPTED this 18th day of October 2011

WASHINGTON COUNTY

DENNIS DRAKE, Chair
Washington County Commission

ATTEST:

Kim M. Hafen
Washington County Clerk-Auditor

Commissioner Drake voted _____
Commissioner Eardley voted _____
Commissioner Gardner voted _____