

Emer. _____
P. Hrngs. _____
Pgs. 7
Filed: 12-11-12

Sponsored by: Council

First Reading: _____

Second Reading: _____

Amended

COUNCIL BILL NO. 2012- 336

GENERAL ORDINANCE NO. _____

AN ORDINANCE

1
2 REPEALING General Ordinance No. 5988 in its entirety. (E-verify Ordinance)

3
4
5 WHEREAS, the voters approved initiative ordinance, General Ordinance No.
6 5988, on February 7, 2012, commonly referred to as the E-Verify ordinance (hereinafter
7 Ordinance); and

8
9 WHEREAS, a lawsuit, styled Positronic Industries et al. v. City of Springfield,
10 Missouri, et al, Case No. 6:12-cv-03243-RED, was filed on May 9, 2012, in the Western
11 District Federal Court (hereinafter Court), challenging all portions of the Ordinance; and

12
13 WHEREAS, a preliminary injunction against enforcement of the Ordinance was
14 entered on May 10, 2012; and

15
16 WHEREAS, an offer of judgment was made by the City to avoid lengthy litigation
17 and costs, but which preserved what was considered to be lawful portions of said
18 Ordinance; and

19
20 WHEREAS, the Plaintiffs accepted said offer on August 29, 2012, filed the offer
21 with the Court on September 20, 2012, and the Court signed the Judgment and Order
22 on September 26, 2012, necessitating that the Ordinance be changed to reflect the
23 portions remaining in effect and striking those portions no longer in effect.

24
25 WHEREAS, on November 19, 2012, Council expressed a desire to repeal the
26 ordinance in its entirety.

27
28 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
29 SPRINGFIELD, MISSOURI, as follows, that:

30
31 Section 1 – General Ordinance No. 5988 is repealed in its entirety, a copy
32 attached as “Exhibit A”, and no portion of the Ordinance is to remain in effect in
33 accordance with the Court’s Order and Judgment.
34

35 Section 2 – This ordinance shall be in full force and effect from and after
36 passage.

37
38 Passed at meeting: _____

39
40 _____
41 Mayor

42
43 Attest: _____, City Clerk

44
45 Filed as Ordinance: _____

46
47 Approved as to form: , City Attorney

48
49 Approved for Council action: , City Manager
50
51
52

EXPLANATION TO COUNCIL BILL NO: 2012- 336

FILED: 12-11-12

ORIGINATING DEPARTMENT: Law

PURPOSE: Adopting a General Ordinance that repeals General Ordinance No. 5988 in its entirety and declaring an emergency.

BACKGROUND INFORMATION: An ordinance was prepared and presented to City Council on November 19, 2012 that would amend the General Ordinance No. 5988 (E-verify Ordinance) to meet the requirements of the Court's Order and Judgment and preserve the lawful portions of the E-verify Ordinance. During that discussion, City Council requested that an ordinance be prepared that repeals General Ordinance No. 5988 in its entirety

This ordinance will repeal General Ordinance No. 5988 in its entirety.

Declaring an emergency for the preservation of public health and safety.

REMARKS:

Submitted by:



Dan Wichmer, City Attorney



Greg Burris, City Manager

Initiative petition adopted by the vote of the people February 7, 2012.

INITIATIVE PETITION FOR CITY ORDINANCE TO PROHIBIT ANY BUSINESS LICENSED BY THE CITY OF SPRINGFIELD, MISSOURI FROM RECRUITING, HIRING, OR CONTINUING TO EMPLOY AN UNLAWFUL WORKER, SPECIFICALLY AN ILLEGAL ALIEN.

We, the undersigned voters of the City of Springfield Missouri, hereby petition the Council of the City, pursuant to Article XIV of the Springfield City Charter to enact the ordinance herein proposed, and, if not enacted therein by the council within thirty (30) days from the date the Clerk of the City certifies this petition as sufficient, that the same shall be submitted to the qualified electors of the City within ninety (90) days from the date said petition has been certified as sufficient by the Clerk of the City for approval or rejection by said voters.

BE IT ORDAINED BY THE PEOPLE OF THE CITY OF SPRINGFIELD AS FOLLOWS:

- 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 Springfield.
- C. That the City of Springfield is authorized to enact ordinances to promote the health, safety, and welfare of its residents, by diligently prohibiting the acts and practices that facilitate illegal immigration, in a manner consistent with federal law and the objectives of Congress.
- D. 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, 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, 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.
- E. The City shall not construe this Ordinance to prohibit the rendering of emergency medical care, emergency assistance, or legal assistance to any person.

Section 2 – 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, LLC, contractors, and subcontractors.
 - (2) The term business entity shall include any business entity that possesses a business license or permit, any business entity that is exempt by law from obtaining such a business license or permit, and any business entity that is operating unlawfully without such a business license or permit.
- B. "City" means the City of Springfield, 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 3 - BUSINESS PERMITS, CONTRACTS, OR GRANTS.

A. It is unlawful for any Business Entity to knowingly recruit, hire for employment, 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 or permit to engage in any type of Work in the City shall sign an affidavit, prepared by the City Attorney affirming that they have enrolled in the Basic Pilot Program and do not knowingly utilize the services or hire any person who is an unlawful worker.

B. Therefore, to ensure uniformity throughout the City, any and all Business Entities doing Work within the City, other Government entities, or agencies authorized by Government to issue permits or licenses, shall participate in the Basic Pilot Program.

C. Enforcement: The Finance Department shall enforce the requirements of this section.

(1) An enforcement action shall be initiated by means of a written signed complaint to the Finance Department 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 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 Finance Department shall, within three business days, request identify information, through the use of the Basic Pilot Program, from the business entity regarding any persons alleged to be unlawful workers. The Finance Department 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) In the case of the first violation, the Finance Department 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 Finance Department. Additionally, the following penalties shall apply:

- a. Second offense – The business shall pay a fine of \$499 and the business entity's business license shall be suspended for 20 business days.
- b. Third offense – The business shall pay a fine of \$499 and the business entity's business license shall be suspended for 30 business days.
- c. Following the fourth offense, the business entity's business license shall be revoked.

(5) In any case in which the alleged unlawful worker is alleged to be an unauthorized alien, the Finance Department shall not fine or suspend the business license of the business entity if prior to the date of the violation, the business entity had verified the work authorization of the alleged unlawful worker using the Basic Pilot Program. If the allegation proves true, and the unlawful worker has obtained Work through the use of false documents or identity theft, the unlawful worker shall be referred to local, state, or federal authority for prosecution.

(6) In the case of the first violation, 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 business entity has corrected the violation, as described in Section 4.B. The affidavit shall include a description of the specific measures and actions taken by the business entity to correct the violation, and shall include the name, address and other adequate identifying information of the unlawful workers related to the complaint.

(7) For a second or third violation, after the end of the suspension period, and upon receipt of the prescribed affidavit, the Finance Department shall reinstate the business permit. The Finance Department 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 Finance Department shall forward the affidavit, complaint, and associated documents to the appropriate state enforcement agency.

D. All agencies of the City shall enroll and participate in the Basic Pilot Program.

E. As a condition for the award of any City contract or grant to a business entity for which the cumulative value of employment, labor, and personal services shall exceed \$10,000, the business entity shall provide documentation confirming its enrollment and participation in the Basic Pilot Program.

Section 4 - IMPLEMENTATION AND PROCESS.

A. *Prospective Application Only.* The default presumption with respect to Ordinances of the City of Springfield - 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.

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 3.C.4 shall be tolled.

(2) 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 3.C.4 shall be tolled.

C. *Procedure if Verification is Delayed.* If the federal government notifies the City of Springfield that it is unable to verify whether an individual is authorized to work in the United States, the City of Springfield 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 unlawful worker's status, without verification from the federal government, pursuant to United States Code Title 8, Subsection 1373(c).

D. *Venue for Judicial Process.* Any business entity subject to a complaint and subsequent enforcement under this Ordinance, or any individual employed by or seeking employment with such a business entity who is alleged to be an unlawful worker, may challenge the enforcement of this Ordinance with respect to such entity or individual before the Administrative Law Judge for the City of Springfield, Missouri, subject to the right of appeal to the Greene County Circuit Court, Springfield, Missouri, pursuant to Chapter 536.100, RSMo et seq.

E. *Deference to Federal Determinations of Status.* The determination of whether an individual is an unauthorized alien shall be made by the federal government, pursuant to United States Code Title 8, Subsection 1373(c). The Municipal Court for the City of Springfield, Missouri, 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).

Section 5 - 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 6 – SAVINGS CLAUSE. Nothing in this Ordinance shall be construed to affect any suit or proceeding now pending in

any court or any rights acquired or liability incurred nor any cause or causes of action occurred or existing, under any act or ordinance repealed hereby. Nor shall any right or remedy of any character be lost, impaired, or affected by this ordinance.

Section 7 – SEVERABILITY CLAUSE. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have adopted the ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 8 – FORCE AND EFFECT. This Ordinance shall be in full force and effect from and after its passage.