

# **City of San Bernardino**

## **[Proposed] Illegal Immigration Relief Act Ordinance**

Authored by Joseph Turner (2005)

### **SECTION 1 Title**

This chapter shall be known and may be cited as the “City of San Bernardino Illegal Immigration Relief Act Ordinance.”

### **SECTION 2 Findings and Declaration of Purpose**

The People of the City of San Bernardino find and declare:

A. That illegal immigration leads to higher crime rates, contributes to overcrowded classrooms and failing schools, subjects our hospitals to fiscal hardship and legal residents to substandard quality of care, and destroys our neighborhoods and diminishes our overall quality of life.

B. That the City of San Bernardino is empowered and mandated by the People of San Bernardino to abate the nuisance of illegal immigration by aggressively prohibiting and punishing the acts, policies, people and businesses that aid and abet illegal aliens.

### **SECTION 3 Definitions**

Whenever used in this chapter, the following terms shall have the following meanings:

“City” means the City of San Bernardino.

“Contract employer” means any person who obtains the services of one or more individuals through a day labor agency.

“Day Labor” means labor or employment that is irregular or occasional at which a person is employed for not longer than the time required to complete the assignment. For the purposes of this chapter, “day labor” does not include secretarial, clerical or professional services.

“Day Laborer Agency” or “agency” means any entity engaged in providing day labor workers for a contract employer.

“Day Laborer” means any person who seeks day labor employment.

“Solicit” or “solicitation” means and includes the following:

1. The act of making a request, offer or an announcement by the use of spoken word, bodily act or gesture;
2. A solicitation as defined in this section shall be deemed completed when made, whether or not an employment relationship is created.

“Vehicle” means a vehicle as defined in California Vehicle Code Section 670 as the same now reads or may hereafter be amended.

## **SECTION 4 Day Laborer Agencies**

### **A. Public Funding**

1. The City shall not operate, construct, maintain or fund any day laborer agencies.

### **B. Operational Procedures, Requirements and Responsibilities**

1. No person or entity shall engage in the business of a day laborer agency without first having obtained and met all applicable business licensing and zoning requirements by the City.

2. Day Laborer Agencies are prohibited from procuring work on behalf of day laborers that are not legally authorized to work in the United States. Agency assumes strict liability with respect to ensuring that all day laborers matched with a contract employer are legally authorized to work in the United States.

3. Each agency must collect a completed Employment Eligibility Verification Form I-9 for each prospective day laborer and must retain the I-9 form of each employee either for three years after the date of hire or for one year after the employment is terminated, whichever is later.

4. Each agency must conduct extensive background checks on each prospective day laborer seeking day labor employment to verify the veracity of all identification information and to ensure that each applicant is legally authorized to work in the United States.

5. Each agency shall collect all compensation from the contract employer for each day laborer transaction.

6. Each agency is responsible for deducting required FICA and state and federal income taxes and remitting payment of remainder to day laborer.

7. Each agency shall purchase general liability insurance in amount not less than two million dollars.

8. Each agency shall provide toilet facilities within its place of business to accommodate the needs of day laborers using the agency.

9. Each agency shall create an account and record of each day laborer applicant containing the information from the background check and all employment transactions.

10. Each agency shall create an accurate record of each transaction by which a day laborer was sent to a contract employer. The record shall include:

- a. The name of the day laborer and the date of the transaction;
- b. The address of the day laborer;
- c. The name, address and telephone number of the contract employer;
- d. The name and title of the individual at the contract employer's place of business responsible for the transaction;
- e. The type of work to be performed;
- f. The hourly rate of pay to the day laborer;
- g. The compensation payable by the contract employer to the agency;
- h. The number of hours worked by the day laborer;
- i. Actual deductions from the day laborer's compensation made by the agency.

### C. Violations

1. Any person or entity that violates any portion of this section shall be subject to a fine of not less than \$1,000 for each offense. Each day that a violation shall continue shall constitute a separate and distinct offense. Any licensee who violates any provision of this chapter shall be subject to suspension or revocation of any licenses and permits.

## **SECTION 5 Solicitations of Day Laborers**

A. Any person or his or her servant, agent, or employee who owns, leases, conducts or maintains any vehicle used to solicit day laborers is guilty of creating a nuisance.

B. Unless procured at a day laborer agency in compliance with this Chapter or at the legal residence of the day laborer offering his/her services, any vehicle used to solicit or attempt to solicit the services of a day laborer is declared a nuisance and the vehicle shall be enjoined and abated by seizure and impoundment, as provided in Chapter 8.35 of the San Bernardino Municipal Code. If the Common Council amends Chapter 8.35, that Chapter shall be added in its original form to this Chapter.

C. This section shall not be construed so as to prohibit a business establishment or property owner from soliciting or hiring employment at or on his or its premises. For the purpose of this section, vehicles and other similar types of mobile locations shall not be considered a business establishment or premises.

## **SECTION 6 Business Permits, Contracts or Grants**

Any for profit entity, including acts committed by its parent company or subsidiaries, that aids and abets illegal aliens or illegal immigration shall be denied approval of a business permit, the renewal of a business permit, city contracts or grants for a period not less than five years from its last offense.

A. Aiding and abetting shall include, but not be limited to, the hiring or attempted hiring of illegal aliens, renting or leasing to illegal aliens, or funding or aiding in the establishment of a day laborer center that does not verify legal work status.

B. Any act that aids and abets illegal aliens within the United States, not just within the City limits, will constitute a violation.

## **SECTION 7 Renting to Illegal Aliens**

A. Illegal aliens are prohibited from leasing or renting property. Any property owner or renter/tenant/lessee in control of property, who allows an illegal alien to use, rent or lease their property shall be in violation of this section, irrespective of such person's intent, knowledge or negligence, said violation hereby being expressly declared a strict liability offense.

B. Property owner is hereby required to submit a copy of the lease or rental agreement to the City Clerk's Office within 45 days of execution.

C. Any person or entity that violates this section shall be subject to a fine of not less than \$1,000.

## **SECTION 8 English Only**

Unless explicitly mandated by the federal government, the state of California or the county of San Bernardino, all official city business, forms, documents, signage, telecommunication or electronic communication devices will be conducted or written in or utilize English only.

## **SECTION 9 Severability**

If any part or 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 provision shall be suspended and superseded by such applicable laws or regulations, and the remainder of this Chapter shall not be affected thereby.

## **SECTION 10 Injunctive and Declaratory Relief**

Any citizen residing in the City of San Bernardino may sue for injunctive, declaratory, or any other appropriate relief to enjoin violations or to compel compliance with the provisions of this section.

## **SECTION 11 Duties to Defend**

If any part or parts of this section are challenged in court, the City shall defend the legality of this section until all appeals have been exhausted and a final judgment is enacted.

#####