

AGENDA REPORT

Meeting Date

March 19, 2007

Agenda Title

Ordinance Requiring the City of Mission Viejo and its Vendors to Participate in the Basic Pilot Program that is Administered by the Department of Homeland Security

Recommended Action

Adopt Ordinance 07-247 Adding Chapter 2.80 to Title 2 of the Mission Viejo Municipal Code Requiring City Employees and City Contractors to Adhere to Specified Hiring Procedures

Executive Summary

At the regular City Council Meeting of March 5, 2007, the City Council introduced Ordinance 07-247 Adding Chapter 2.80 to Title 2 of the Mission Viejo Municipal Code Requiring City Employees and City Contractors to Adhere to Specified Hiring Procedures. The Ordinance is now placed on the agenda for adoption.

Previous Relevant Council Actions for This Item

March 5, 2007

Attachments

Ordinance 07-247

Fiscal Impact:

Amount Requested \$ N/A

Sufficient Budgeted Funds Available?: Yes ___ No ___ (If no, see attached fiscal analysis)

Prog/Fund # _____ Category: Pers. ___ Optg. ___ Cap. ___ -or- CIP# _____ Fund# _____

Prepared By



Karen Hamman
City Clerk

Reviewed By



for Irwin Bornstein
Asst City Mgr/Dir of Admin Svcs.

Reviewed By



William P Curley III
City Attorney

Submitted By



Dennis Wilberg
City Manager

ORDINANCE NO. 07-247

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MISSION VIEJO ADDING CHAPTER 2.80 TO TITLE 2 OF THE MISSION VIEJO MUNICIPAL CODE REQUIRING CITY EMPLOYEES AND CITY CONTRACTORS TO ADHERE TO SPECIFIED HIRING PROCEDURES

THE CITY COUNCIL OF THE CITY OF MISSION VIEJO DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Findings and Intent.

The City Council of the City of Mission Viejo finds and declares:

1. A just society requires enforcement of and compliance with democratically enacted laws. Governmental entities should promote compliance with the law and should avoid actions and policies that encourage disrespect for and violation of the law, and that reward lawbreakers at the expense of law-abiding people and businesses.

2. Federal law regulates immigration and justifiably requires that certain conditions be met for a person to be authorized to work or reside in the United States, which this City wishes to see followed.

3. The welfare of the public and, in particular, law-abiding persons and business entities, is served and promoted by governmental policies and procedures that deter and prevent legally unauthorized employment. Among such policies and procedures are those that ensure verification of eligibility for employment consistent with federal law.

Section 2. Ordinance Text.

A new Chapter 2.80 shall be added to Title 2 of the Mission Viejo Municipal Code to read, in words and figures, as follows:

“Section 2.80.010. Reference.

“The ordinance shall be known and may be cited as the ‘City of Mission Viejo Lawful Hiring Compliance Ordinance.’

“Section 2.80.020. 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: 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 with the City. The term business entity shall include but not be limited to self-employed individuals, partnerships, corporations, contractors, and subcontractors doing business with the City. No governmental agency shall be considered to be a Business Entity for purposes of this Chapter.

“B. City: The City of Mission Viejo, a California general law city.

“C. Contractor: A person, employer, or business entity that enters into a contract or an agreement with the City 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. No governmental agency shall be considered to be a Contractor for purposes of this Chapter.

“D. Unauthorized Alien: A person who is unauthorized to be lawfully employed in the United States, pursuant to 8 U.S.C. § 1324a(h)(3). The City shall not conclude that a person is an unauthorized alien unless and until an authorized representative of the City has verified with the federal government, pursuant to 8 U.S.C. § 1373(c), that the person is an unauthorized alien.

“E. Unlawful Worker: A person who is an unauthorized alien as defined by United States Code Title 8, subsection 1324a(h)(3).

“F. Work: Any job, task, employment, labor, personal services, or any other activity for which compensation is provided, expected, or due, including provided to City all activities conducted by Business Entities and Contractors.

“G. Basic Pilot Program: 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); and operated by the United States Department of Homeland Security (or a successor program established by the federal government.)

“Section 2.80.030. Application of Requirements.

“A. The City shall enroll and participate in the Basic Pilot Program, as amended. The City Manager shall oversee the City’s participation in this program and shall ensure that it is applied to all persons to be hired by the City as City employees.

“B. As a condition for the award or renewal of any City contract, gift, contribution, or grant to a Business Entity or Contractor after July 1,

2007 for which the reasonable value of employment, labor or personal services shall exceed \$15,000, the Business Entity or Contractor shall enroll in the Basic Pilot Program and thereafter shall provide the City documentation affirming its enrollment and participation in the Basic Pilot Program. The Business Entity or Contractor shall be required to continue its participation in the Basic Pilot Program throughout the course of its business relationship with the City.

“C. As a condition for the award or renewal of any City Franchise made after July 1, 2007 the Business Entity shall provide documentation affirming its enrollment and participation in the Basic Pilot Program prior to the award of said franchise. The Business Entity or Contractor shall continue its participation in the Basic Pilot Program throughout the term of its business relationship with the City.

“D. The City shall include specific written notice in all requests for bids that Business Entities may be required to enroll in the Basic Pilot program pursuant to Subsection B above. Business Entities are exempt from Subsection B if they received requests for bids without such notice.

“Section 2.80.040. Enforcement of Contract Terms.

“The City Manager shall implement procedures necessary to implement and enforce the requirements of this Chapter into all contracts the City enters into with Business Entities or Contractors. These procedures shall ensure that no business engages in discrimination based on national origin, ethnicity, race or any other classification deemed suspect by the City or any agency or court.

“The City shall suspend a contract with any Business Entity or Contractor that the United States Attorney General or the Secretary of Homeland Security has found to have been in violation of 8 U.S.C. § 1324a.”

“The City may suspend a contract with any Business Entity or Contractor that fails to correct a violation of 8 U.S.C. § 1324a within thirty business days after notification of the violation by the United States Attorney General or Secretary of Homeland Security.”

“The City shall not suspend the contract of any Business Entity or Contractor if, prior to the date of the violation, the Business Entity or Contractor had verified the work authorization of any alleged unlawful workers using the Basic Pilot Program and demonstrates the same to City.

“Every contract entered into by the City shall provide that the suspension for noncompliance with this Chapter shall terminate one business day after a legal representative of the Business Entity or Contractor submits, at a City office designated by the City Manager a

declaration signed under penalty of perjury of the laws of the State of California, in the form provided by the City, stating that the violation of federal law has ended.”

Section 3. Construction.

The requirements and obligations of this Chapter shall be implemented in a manner fully consistent with federal law including but not limited to those laws regulating immigration and those laws protecting the civil rights of all citizens, nationals, lawful permanent residents, or aliens authorized to work.

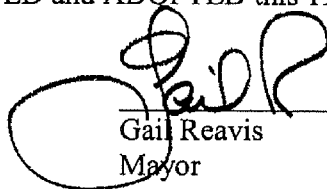
Section 4. The terms of this Ordinance shall supersede any previous resolutions of the Council or Council policies which may be in conflict or inconsistent with the terms of this Ordinance.

Section 5. The City Clerk of the City of Mission Viejo shall certify to the passage and adoption of this Ordinance and shall cause the same or a summary thereof to be published and posted in the manner required by law.

Section 6. If any section, subsection, sentence, clause or word of this Ordinance is for any reason held to be invalid by a 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 Mission Viejo hereby declares that it would have passed and adopted this Ordinance, and each and all provisions thereof, irrespective of the fact that one or more of said provisions may be declared to be invalid.

Section 7. The City Council hereby finds that this Ordinance is not subject to the California Environmental Quality Act pursuant to CEQA Guidelines Sections 15060(c)(2) and 15061(b)(3) as it can be seen with certainty that this Ordinance’s enactment will not have a significant effect on the environment.

PASSED, APPROVED and ADOPTED this 19th day of March, 2007.



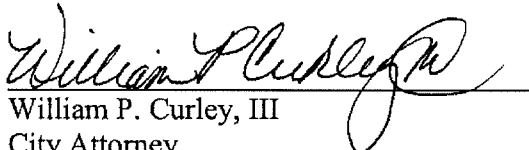
Gail Reavis
Mayor

ATTEST:



Karen Hamman, CMC
City Clerk

APPROVED AS TO FORM:



William P. Curley, III
City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF MISSION VIEJO)

I, Karen Hamman, City Clerk of the City of Mission Viejo, do hereby certify that the foregoing Ordinance No. 07-247 was duly introduced and placed upon its first reading at a regular meeting of the City Council on the 5th day of March, 2007, and that thereafter, said Ordinance was duly adopted and passed at a regular meeting of the City Council on the 19th day of March, 2007 by the following vote, to wit:

AYES: Kelley, Ledesma, MacLean, Reavis, and Ury
NOES: None
ABSENT: None



Karen Hamman, CMC
City Clerk