

TO: City Council
FROM: Iris Yang, City Attorney
SUBJECT: E-Verify Program
DATE: October 20, 2015

NEEDS: For the City Council to consider whether it should verify City employment eligibility through the optional E-Verify program in addition to the required Form I-9 process.

FACTS:

1. A citizen recently asked that the City consider using the E-Verify program for employment eligibility verification. E-Verify is an internet-based system operated by the U.S. Citizenship and Immigration Services (USCIS) in partnership with the Social Security Administration (SSA) that allows employers to electronically verify the employment eligibility of new hires.
2. E-Verify began as a pilot program in 1996 and was most recently set to expire on September 30, 2015. The program was temporarily extended as part of the federal government's continuing resolution regarding the budget; the program is now set to expire on December 11, 2015 unless it is reauthorized by Congress.
3. Federal law requires that the City use Form I-9 to verify employment eligibility of all its employees. The form requires an employee to present certain documents to verify identity and eligibility. The employer must sign and certify that each document was inspected and reasonably appeared genuine.
4. E-Verify would not replace the use of Form I-9, which is still mandatory for all employers. The purpose of E-Verify is to electronically compare information entered on the I-9 form with records contained in the Social Security Administration and USCIS database. If the information matches, the employer will receive an "Employment Authorized" result; if the information does not match, the employer receives a "Tentative Nonconfirmation" (TNC) result. A TNC result does not necessarily mean the employee is ineligible to work; the employer must notify the employee of the result and provide the employee an opportunity to contest the result before terminating the employee.
5. To use E-Verify, the employer must enroll in the program. Enrollment is online and generally requires registering the company/organization, accepting the website terms, and agreeing to the program's Memorandum of Understanding. Enrollment and use of the program are free.
6. California law prohibits the state, a city, county, or special district from requiring an employer to use an electronic employment verification system, including E-Verify, although the city may voluntarily determine to participate in the program. AB 622, signed into law on Oct. 9, 2015, additionally prohibits an employer from improperly using E-Verify to check the employment authorization status of an existing employee or to pre-screen applicants, unless

required by federal law, and imposes civil penalties of \$10,000 per violation. According to a legislative bill analysis, the effectiveness of the E-Verify system has been questioned by the federal General Accountability Office, which found that while the E-Verify system has improved over the years, incorrect TNC letters have been issued because the relevant databases are not updated properly or in a timely manner.

**ANALYSIS &
CONCLUSION:**

The City follows the required practice of using and retaining a Form I-9 for each newly-hired employee as verification of that individual's employment eligibility. Adding E-Verify would involve additional steps in the employment verification process – the program does not and cannot replace the City's duty to complete and retain a Form I-9 for each employee.

Unless re-authorized by Congress, the E-Verify program will expire on December 11, 2015. In addition, AB 622 now imposes penalties upon a California employer if the E-Verify program is used improperly.

Based on all of the above, staff recommends that the City not implement the E-Verify Program at this time.

**FISCAL
IMPACT:**

Additional staff time would be required to enroll in the E-Verify program and process the additional information required for submission.

OPTIONS:

- A. Receive and file report; or
- B. Amend, modify, or reject the above option.