

TO: City Council
FROM: Iris Yang, City Attorney
SUBJECT: E-Verify Program
DATE: November 17, 2015

NEEDS: To provide supplemental information as to whether California law would prohibit the City from requiring its contractors to use E-Verify for the contractor's employees.

- FACTS:**
1. The City Council received information on October 20 regarding 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. 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.
 3. E-Verify would not replace the use of Form I-9, which is still mandatory for all employers. E-Verify electronically compares 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.
 4. 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 for its own employees. Specifically, pursuant to Labor Code section 2812, a city or county cannot require an employer to use a system such as E-Verify as a condition to (i) receiving a contract from the city, or (ii) receiving or renewing a business license.
 5. An informal survey also confirmed that no local jurisdictions require their contractors to use E-Verify.

**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.

Labor Code section 2812 specifically prohibits the City from requiring that its contractors participate in the E-Verify program.

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. It could only be used for City employees.

OPTIONS:

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