

- City Council
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**Murrieta**  
**Agenda Report**

Subject: Second Reading – Ordinance to Implement E-Verify Requirements for Business Licenses

Date: December 21, 2010

Prepared by: Brian Ambrose, Senior Management Analyst

Approved by: Nancy Driggers, Assistant to the City Manager

 Rick Dudley, City Manager

### **RECOMMENDATION**

Adopt an Ordinance amending Chapter 5.04 of the Murrieta Municipal Code for the enforcement of worker eligibility process (E-Verify) requirements for business licenses.

### **PRIOR ACTION/VOTE**

On August 17, 2010, the City Council directed staff to draft an Ordinance mandating the utilization of E-Verify as a requirement for a business license in the Murrieta Municipal Code (Vote: 5-0).

On November 16, 2010, the City Council directed staff to amend the draft Ordinance amending Chapter 5.04 of the Murrieta Municipal Code for the enforcement of worker eligibility process (E-Verify) requirements for business licenses (Vote: 5-0).

On December 7, 2010, the City Council introduced the Ordinance amending Chapter 5.04 of the Murrieta Municipal Code (Vote: 5-0).

### **BACKGROUND**

At the July 6, 2010 City Council meeting, members of the community spoke during the Public Comments portion of the agenda regarding the various issues surrounding illegal immigration. At the conclusion of the meeting, staff was directed by the City Council to further research the issue of immigration and bring back a discussion item at a future meeting.

At the August 17, 2010 City Council meeting, staff brought forth a Resolution encouraging all businesses within the city to utilize the E-Verify program to confirm the legal working status of employees, modeled on the City of Murrieta's voluntary process for all new hires. After discussion, the City Council directed staff to prepare a draft ordinance mandating the utilization of E-verify when hiring employees as a condition of obtaining a business license.

At the November 16, 2010 City Council meeting, staff introduced an Ordinance amending Chapter 5.04 of the Murrieta Municipal Code mandating that all businesses confirm the use of E-Verify for all new hires for a new business license or business license renewal. The City Council had concerns regarding the citation and administrative hearing process. Therefore, staff was directed to draft a revised Ordinance taking into account the concerns of the City Council.

At the December 7, 2010 City Council meeting, staff re-introduced the revised Ordinance with updated citation and administrative hearing process. As part of the process to implement the new E-Verify requirement, staff informed the City Council that before the implementation began, a City Council policy would be drafted outlining the process and procedures that will be used, including addressing concerns

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regarding an applicants request for a continuance in cases of appeals. The draft policy should be ready for review by March, 2011.

### **FISCAL IMPACT**

The cost to revise business license forms and software is anticipated to cost \$2,300. Cost for postage to send a notification to all business license holders on record is expected to cost \$2,240. Minor costs will be associated with community forums in partnership with the Murrieta Chamber of Commerce. Other undetermined (but potentially substantial) costs will be associated with training Code Enforcement personnel and enforcement of the E-Verify requirement.

### **ATTACHMENTS**

1. Ordinance Amending Chapter 5.04 of the Murrieta Municipal Code for the enforcement of worker eligibility process (E-Verify) requirements for business licenses

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MURRIETA, CALIFORNIA,  
AMENDING CHAPTER 5.04 OF THE MURRIETA MUNICIPAL CODE FOR THE  
ENFORCEMENT OF WORKER ELIGIBILITY PROCESS REQUIREMENTS  
FOR BUSINESS LICENSES

WHEREAS, the Immigration Reform and Control Act of 1986 required employers to examine documentation from each newly hired employee to evidence his or her identity and eligibility to work in the United States; and

WHEREAS, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 required the Immigration and Naturalization Service, which has since been absorbed into the U.S. Department of Homeland Security, to conduct three (3) distinct pilot programs to determine the best method of verifying an employee's employment verification; and

WHEREAS, in 2007, one of the pilot programs was renamed E-Verify; and

WHEREAS, in September 2009, the Federal Contractor Rule went into effect which directs federal agencies to require many federal contractors entering into new contracts to use E-Verify for new employees, and existing employees working on covered federal contracts; and

WHEREAS, the City of Murrieta ("City") currently utilizes the E-Verify program to verify the legal working status of newly hired City employees; and

WHEREAS, the City finds that a compelling public interest will be served by requiring that all holders of City business licenses use the E-Verify program to verify the legal working status of newly hired employees; and

WHEREAS, the City finds the E-Verify requirements it adopts today as part of Section 5.04 of the Murrieta Municipal Code comply with the requirements of 8 United States Code section 1324a(h)(2) by addressing employer sanctions through licensure and similar means. Criminal penalties contained in Section 5.04 are associated exclusively with the crimes of false swearing on an application for business license filed with the City, not the act of employing unauthorized persons,

NOW, THEREFORE, the City Council of the City of Murrieta, California, does ordain as follows:

**SECTION 1. AMENDMENTS TO SECTION 5.04.**

The following subsections of Section 5.04 of the Murrieta Municipal Code are hereby amended to read as follows:

**5.04.010 Definitions.**

For the purpose of this chapter, unless the context clearly requires otherwise, the words, and phrases used in this chapter shall have the following meanings:

“Business” means profession, trade, occupation, gainful activities, and all and every kind of professional, commercial, and industrial calling whether or not carried on for profit.

“Business license officer” means the director of finance and general services of the city, or the designee of such person.

“Employed” means engaged in the operation or conduct of a business, or related activity, whether as a proprietor or otherwise.

“Employee” means any person who provides services or labor within the city for an employer for wages or any other remuneration. An independent contractor is not an employee for the purpose of this chapter.

“E-Verify Program” means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, as amended, and operated jointly by the United States Department of Homeland Security and the United States Social Security Administration, or a successor electronic verification of work authorization program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees pursuant to the Immigration Reform and Control Act 8 U.S.C. § 1324a.

(Ord. 3 § 1 (part), 1991: prior code § 5.02.001)

#### **5.04.250 Conditions of application.**

A. All business license applications shall contain as a sworn statement:

- (1) the name, home address, and telephone number of each owner, officer, partner, and the applicant;
- (2) the name, home address, and telephone number of each managing employee, if not included in (1), of this section;
- (3) the name, address, and telephone number of the business to be licensed;
- (4) a detailed description of the business to be conducted; and
- (5) such other information as may be required by the application form or requested by the business license officer and convenient for the enforcement of this chapter.

B. Use of E-Verify

All business license applications for a business employing an employee shall also contain as a sworn statement, certifying that as of the application date, the business shall utilize the federal E-Verify program to verify the employment authorization of all new employees. As a condition of applying for and obtaining a business license, a license applicant expressly consents to produce to the City proof of its use of E-Verify as required by this section within five (5) business days of a request from the City.

(Ord. 3 § 1 (part), 1991: prior code § 5.02.049)

#### **5.04.280 Renewal of licenses.**

##### **A. Information to Determine Fee**

Every applicant for the renewal of a license shall submit to the business license officer the application fee determined by resolution of the city council therefore, together with a sworn statement, upon a form to be provided by the business license officer, setting forth such information concerning the applicant's business during the preceding year as may be required by the business license officer to enable him to ascertain the amount of the license fee to be paid by the applicant pursuant to the provisions of this chapter.

##### **B. New Licensing Requirements**

Whenever a new requirement is added to Section 5.04.250, Conditions of application, after a license has been issued, in order to renew the license, the license-holder must demonstrate compliance with all requirements of Section 5.04.250 in effect when the application for renewal is made.

(Ord. 3 § 1 (part), 1991: prior code § 5.02.055)

#### **5.04.335 Revocation of business license.**

A. Any business license issued pursuant to the provision of this chapter may be revoked by the city council on the basis of any of the following:

1. That the business or activity has been conducted in an illegal or disorderly manner;
2. That any operator of the business or activity has an unfit character;
3. That the purpose for which the permit has been issued is being abused to the detriment of the public;
4. That the permit is being used for a purpose different from that for which it was issued;
5. That the permittee has misrepresented any fact in the application for permit or has not answered each question therein truthfully;
6. That the license holder has failed to utilize the E-Verify program to establish the work authorization for a newly-hired employee after completing a business application or renewal certifying compliance with the E-Verify program.

B. Unless otherwise provided in this chapter, in the event a permit is revoked pursuant to the provisions of this chapter, another permit shall not be granted to such person within twelve (12) months after the date of such revocation. The city council's determination following a revocation hearing shall be final and conclusive in the matter.

(Ord. 279 § 2 (part), 2003)

## SECTION 2. NEW SUBSECTIONS ADDED TO SECTION 5.04.

The following subsections are hereby added to Section 5.04 of the Murrieta Municipal Code as follows:

### **5.04.390 Enforcement of E-Verify requirements**

#### **A. E-Verify Requirements**

As used in this Section 5.04.390, "E-Verify requirements" shall mean and include Sections 5.04.250(B), 5.04.280(B) or 5.04.335(A)(6).

#### **B. Record-Keeping**

1. It shall be the responsibility of each business license holder to maintain records demonstrating use of the E-Verify program to verify the employment authorization of employees as required by the E-Verify requirements of this Title. Failure to identify records of use of the E-Verify program shall create a rebuttable presumption that a business license holder did not comply with the E-Verify requirements of this Title.
2. Proof of verifying the employment authorization of an employee through the E-Verify program creates a rebuttable presumption that a business license holder complied with the E-Verify requirements of this Title.

#### **C. Violation and Penalties**

1. Penalties that may be imposed upon a finding that a business license holder has failed comply with the E-Verify requirements of this title, shall be as follows:
  - a. For the first violation within any 24-month period, a warning and a fine not to exceed \$100.
  - b. For a second violation within any 24-month period, suspension of the business license for a period of three (3) months and a fine not to exceed \$200.
  - c. For a third violation within any 24-month period, revocation of the business license for a period of one (1) year and a fine not to exceed \$500.
2. The holder of a revoked or suspected business license may apply for a new business license after the period of suspension or revocation has expired.

#### **D. Initial Investigation**

1. The E-Verify requirements of this Title shall be initially enforced by the City's code enforcement department.
2. Any person may make an allegation to the City's code enforcement department that a business license holder has not utilized the E-Verify program pursuant to the E-Verify requirements of this Title. The city's code enforcement supervisor may conduct or order

an initial investigation of violation upon his or her own determination or if he or she determines an allegation to be well-founded.

3. If the investigation determines a business license holder has failed to comply with the E-Verify requirements of this title for the first time within a 24-month period, a warning may be issued pursuant to subsection 5.04.390(C).
4. A warning, unaccompanied by any monetary fine, license suspension or license revocation is not appealable and becomes immediately final upon issuance.
5. If a warning is issued to a business license holder, the code enforcement supervisor shall cause a follow-up investigation to occur at a later date after the warning is issued to determine whether the business license holder is complying with the E-Verify requirements of this title.
6. If the follow-up investigation determines the business license holder is not in compliance with the E-Verify requirements of this title, a Notice of Violation and Penalty may be issued pursuant to this subsection.

#### E. Notice of Violation & Penalty

1. Whenever the city's code enforcement supervisor concludes evidence exists that a business license holder has not complied with the E-Verify requirements of this Title, the code enforcement supervisor may issue a notice of penalty imposing any penalty consistent with subsection 5.04.390(C).
2. The notice of the penalty shall be served upon the license holder personally or by certified mail at the address provided to the city in the most recent license application or renewal. The notice of penalty shall include the basis of the failure to utilize the E-Verify program.
3. A business license holder may appeal any penalty issued pursuant to this subsection, other than a warning which is final upon issuance, by requesting an administrative hearing.
4. A request for administrative hearing to appeal a penalty issued pursuant to this subsection must be filed within ten (10) days after the issuance of the notice of penalty. Any penalty becomes final if a request for an administrative hearing is not timely filed.
5. A request for an administrative hearing must be filed with the city clerk's office, in writing and include payment of a hearing fee to pay for the reasonable administrative costs of providing the requested hearing. A hearing fee schedule shall be established by resolution of the city council.

#### F. Administrative Hearing

1. Within twenty (20) days of a properly-filed request for an administrative hearing to challenge a notice of penalty, the city clerk shall notice an administrative hearing to occur. The administrative hearing shall be set to occur no later than sixty (60) days after the request for hearing was filed. Notice of the hearing shall be served upon the license holder personally or by certified mail at the address provided to the city in the most

recent license application or renewal. Notice of the hearing shall include notice of the basis of the suspected failure to utilize the E-Verify program and a copy of any documents upon which the notice of hearing was based and inform the license holder of the right to present evidence contrary to the information contained in the notice of the hearing.

2. The city manager or a hearing officer selected by the city manager shall hear all appeals of notices of penalties issued pursuant to this subsection.
3. The following rules shall apply at the administrative hearing:
  - a. Oral evidence shall be taken under oath or affirmation. The person conducting the hearing has the authority to administer oaths and to receive and rule on admissibility of evidence;
  - b. The license holder and the city shall have the right to call and examine witnesses, to cross-examine opposing witnesses who have testified under direct examination and to introduce evidence. The person conducting the hearing may call and examine any witness;
  - c. As a condition of obtaining a business license, all business license holders consent and agree to provide the city all records related to employment authorization of employees for any purpose;
  - d. Technical or legal rules relating to evidence and witnesses shall not apply. Any relevant evidence may be admitted if it is material and of a type customarily relied upon by responsible persons in the conduct of their affairs. Hearsay testimony, while admissible, shall not be sufficient as the sole evidence to support a finding unless the testimony would be admissible pursuant to the California Evidence Code. All rules of privileges shall be applicable as provided pursuant to California case and statutory law. Irrelevant, collateral, and repetitious testimony may be excluded.

#### 4. Administrative Hearing Determination

Within ten (10) days of the conclusion of the administrative hearing, the hearing officer shall issue a determination. If the business license-holder does not appear on the date set for the initial hearing, the hearing officer may recommend the business license be revoked or suspended. All recommendations of the hearing officer shall be supported by written findings of fact. Notice of the determination shall be served upon the license holder personally or by certified mail at the address provided to the city in the most recent license application or renewal.

#### 5. Appeal of Administrative Determination

- a. The business license-holder may appeal a determination of the hearing officer imposing a license suspension or revocation to the city council by filing a notice of appeal with the city clerk's office within ten (10) days of hearing officer's determination and payment of a hearing fee to pay for the reasonable administrative costs of providing the requested hearing before the city council. A hearing fee schedule shall be established by resolution of the city council.



- b. A determination by a hearing officer that does not include suspension or revocation of a business license becomes final upon issuance and is not further appealable.

#### G. Appeal to City Council

1. The city council shall hold a hearing within sixty (60) days of a properly-filed notice of appeal of determination of a hearing officer to suspend or revoke a business license to determine whether or not to affirm the determination or to make different findings.
2. The city shall provide at least twenty (20) days notice of the date of the city council's hearing of appeal served upon the license holder personally or by certified mail at the address provided to the city in the most recent license application or renewal.
3. The hearing shall be conducted by the city council *de novo* pursuant to the same procedures above at subsection 5.04.390(F)(3).
4. After the hearing, and the business license holder has had an opportunity to present and confront evidence pursuant to the provisions of this section, the city council shall determine whether or not the business license shall be revoked or suspended and may impose any penalty consistent with subsection 5.04.390(C) or other provision of this Code. The city council shall direct that written findings of fact supporting its determination shall be prepared.

#### H. Judicial Review

Judicial review of any final or non-appealable determination made by the code enforcement supervisor, a hearing officer at an administrative hearing or a decision of the city council pursuant to this section may be made pursuant to Section 1094.5 of the Code of Civil Procedure only if the Petition for Writ of Mandate is filed not later than the ninetieth (90<sup>th</sup>) day following the date on which the decision becomes final. If the date is not otherwise specified, the decision is final on the date it is made. In issuing its final decision, the city clerk shall provide the business license holder of the city council's decision that the time within which judicial review must be sought is governed by Section 1094.6 of the Code of Civil Procedure.

#### SECTION 3 SEVERABILITY.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications, and to this end the provisions of this Ordinance are declared to be severable.

#### SECTION 4. EFFECTIVE DATE.

This Ordinance shall take effect and be enforced ninety (90) days following its adoption.

#### SECTION 5. NOTICE OF ADOPTION.

The City Clerk shall certify to the adoption of this Ordinance and shall publish a summary of this Ordinance and post a certified copy of the full Ordinance in the office of the City Clerk at least five (5) days prior to the adoption of the proposed Ordinance; and within fifteen (15) days after

adoption of the Ordinance, the City Clerk shall publish a summary of the Ordinance with the names of the council members voting for and against the Ordinance.


ADOPTED by the City Council and signed by the Mayor and attested by the City Clerk this 21<sup>st</sup> day of December, 2010.

\_\_\_\_\_  
Randon K. Lane, Mayor

ATTEST:

\_\_\_\_\_  
A. Kay Vinson, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Leslie E. Devaney, City Attorney

I, A. Kay Vinson, City Clerk of the City of Murrieta, California, hereby certify under penalty of perjury that the foregoing Ordinance was duly and regularly introduced at a meeting of the City Council on the 7<sup>th</sup> day of December, 2010, and that thereafter the said Ordinance was duly and regularly adopted at a regular meeting of the City Council on the 21<sup>st</sup> day of December, 2010, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Murrieta, California, this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
City Clerk