

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject:

DISCUSSION OF IMPLEMENTING THE USE OF THE E-VERIFY SYSTEM TO VERIFY EMPLOYMENT ELIGIBILITY AT THE TOWN OF APPLE VALLEY

At the meeting of December 14, 2010, Mayor Pro Tem Stanton suggested that an item be placed on a future agenda for the purpose of discussing E-Verify and the ability to ensure a legal workforce for those employees and contractors working for the Town of Apple Valley.

Background:

On July 26, 2006, the Town of Apple Valley adopted resolution 2006-46 which states, "(1) Requiring all contractors in every public works and professional contract and in all other Town contractors for goods and services to comply with the requirements of the Immigration Reform and Control Act of 1986, 8 U.S.C §§1324a and 1324b, prohibiting the hiring of unauthorized aliens; (2) Requiring compliance by the Town with all laws regarding identity and employment authorization of persons hired by the Town; and (3) Providing for Town reporting of violations."

Additionally, on October 10, 2006, the Town of Apple Valley adopted resolution 2006-82 which states, "That all holders of a Town business license comply with the requirements of the Immigration Reform and Control Act of 1986, which prohibits the hiring of unauthorized aliens; and providing for revocation of business licenses where violations are found to exist."

Summary Statement:

In follow up to Mayor Pro Tem Stanton's suggestion, Town staff researched the E-Verify system to determine the use of this system in conjunction with the Town's current practices.

(Continued on next page)

Recommended Action:

Provide direction to staff.

Proposed by: Nikki Salas, Human Resources/Risk Director Item Number _____

T. M. Approval: _____ Budgeted Item Yes No N/A

E-Verify (continued)
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Town staff currently verifies that all new Town employees hired after November 6, 1986 is authorized to work in the United States using the I-9 Employment Eligibility Verification form as required by the United States Department of Homeland Security, U.S. Citizenship and Immigration Services. The E-Verify system would be used as an additional resource in our verification process.

E-Verify is an Internet based system operated by the U.S. Department of Homeland Security in partnership with the Social Security Administration. The system allows participating employers to electronically verify the employment eligibility of newly hired employees.

If the Town elects to voluntarily participate in E-Verify, the Town must follow the E-Verify procedures for all newly hired employees. Some of the E-Verify procedures are:

- The Town must notify all job applicants of E-Verify participation;
- Clearly display both English and Spanish “Notice of E-Verify Participation” and “Right to Work Poster(s);”
- Town must continue to complete the Form I-9 Employment Eligibility Verification for all newly hired employees;
- Ensure that all Form I-9 B identity documents have a photograph; and
- Create an E-Verify case for all newly hired employees no later than the third business day after they start work for pay.

Employers participating in E-Verify may not do the following:

- Use E-Verify to prescreen applicants for employment;
- Check employment eligibility for employees hired before the Town signs the E-Verify MOU;
- Specify or request which Form I-9 documentation a newly hired employee must use;
- Use E-Verify to discriminate against any job applicant or new hire on the basis of his or her national origin, citizenship, or immigration status; and
- Selectively verify work authorization for newly hired employees.

Town staff would use the E-Verify system to work alongside the current Form I-9 to establish the legal right to work in the United States. The Town can only use this system to verify the Town’s employees hired after adoption of this program. The Town cannot use E-Verify on Contractor’s employees. While there is no cost to participate in the E-Verify system, there will be a slight cost to the Town to implement the E-Verify system to include the initial training and ongoing staff time to verify future employees on this system.

RESOLUTION No. 2006-46

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, (1) REQUIRING ALL CONTRACTORS IN EVERY TOWN PUBLIC WORKS AND PROFESSIONAL CONTRACT AND IN ALL OTHER TOWN CONTRACTS FOR GOODS AND SERVICES TO COMPLY WITH THE REQUIREMENTS OF THE IMMIGRATION REFORM AND CONTROL ACT OF 1986, 8 U.S.C. §§1324a AND 1324b, PROHIBITING THE HIRING OF UNAUTHORIZED ALIENS; (2) REQUIRING COMPLIANCE BY THE TOWN WITH ALL LAWS REGARDING IDENTITY AND EMPLOYMENT AUTHORIZATION OF PERSONS HIRED BY THE TOWN; AND (3) PROVIDING FOR TOWN REPORTING OF VIOLATIONS.

WHEREAS, the Immigration Reform and Control Act of 1986, codified at 8 United States Code (“U.S.C.”) §§ 1324a and 1324b (the “IRCA”) was enacted by the Legislature to reduce illegal immigration by eliminating job opportunities for unauthorized aliens, on the assumption that aliens enter the United States illegally in search of employment; and

WHEREAS, the Town Council of the Town of Apple Valley (Apple Valley) believes that the strict enforcement of the IRCA and other applicable federal, state and local laws which prohibit the employment of unauthorized aliens, will protect local jobs and provide greater employment opportunities for citizens or nationals of the United States, aliens lawfully admitted for permanent residence, and others who are legally documented and entitled to work in the United States; and

WHEREAS, the IRCA imposes a regulatory burden on all employers, including public agency employers, making it unlawful to knowingly employ or continue to employ any unauthorized alien, and imposing criminal and civil penalties for violations; and

WHEREAS, the IRCA requires employers to verify and document the identity and employment authorization of every employee, and to confirm that every person hired is not an unauthorized alien; and

WHEREAS, Apple Valley recognizes that employment discrimination on the basis of national origin is prohibited against any person other than an unauthorized alien (8 U.S.C. § 1324 (a)(1), and does not intend, by the adoption of this Resolution, to condone or encourage illegal discrimination or any action which is expressly prohibited or preempted by any federal or state law; and

WHEREAS, as used in this Resolution, the term “unauthorized alien” shall mean an alien who is neither a permanent resident nor authorized to be employed in the United States, as defined in the IRCA at 8 U.S.C. § 1324a(h)(3); and

WHEREAS, Apple Valley wishes to ensure that, to the greatest extent allowed by law, the Town, and each of its contractors and their subcontractors, is in full compliance with the IRCA, and all other applicable federal, state and local laws enacted to ensure

that unauthorized aliens are not employed by or in the Town; and that the Town's and its contractors' employees are fully documented and authorized to work in the United States.

NOW, THEREFORE, BE IT RESOLVED, ORDERED AND DIRECTED, in accordance with and for all of the reasons set forth in the recitals hereinabove, as follows:

1. That the following term and condition shall be included in every public works and professional services contract, and in all other Town contracts for goods and services:

“The contractor shall strictly comply with all federal, state and local laws and regulations, including, but not limited to the Immigration Reform and Control Act of 1986, codified at 8 U.S.C. §§ 1324a and 1324b (the “IRCA”), which require and ensure the hiring and retention of employees who are United States citizens, permanent residents and/or who are otherwise authorized by law to work in the United States of America, and, as required by the IRCA, shall affirmatively verify the identity and employment authorization of every employee as a condition of employment or continued employment. The contractor shall further include this requirement in any subcontract made pursuant to this contract.”

2. The Town of Apple Valley requires verification that every person hired by the Town is legally able and authorized to work in the United States of America, and the Town shall comply in every respect with federal, state and local employment laws, and shall verify the identity and employment authorization of every Town employee as required by the IRCA.
3. The Town of Apple Valley shall pursue its legal rights and responsibilities to the fullest extent allowed by law in reporting any known or suspected violations of the IRCA, or any other federal, state or local laws, in ensuring that unauthorized aliens are not employed by the Town or by Town contractors.

APPROVED AND ADOPTED by the Town of Apple Valley this 25th day of July, 2006.

RESOLUTION No. 2006-82

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, STATING ITS INTENT THAT ALL HOLDERS OF A TOWN BUSINESS LICENSE COMPLY WITH REQUIREMENTS OF THE IMMIGRATION REFORM AND CONTROL ACT OF 1986, WHICH PROHIBITS THE HIRING OF UNAUTHORIZED ALIENS; AND PROVIDING FOR REVOCATION OF BUSINESS LICENSES WHERE VIOLATIONS ARE FOUND TO EXIST.

WHEREAS, the Immigration Reform and Control Act of 1986, codified at 8 United States Code (“U.S.C.”) §§ 1324a and 1324b (the “IRCA”) was enacted by the Legislature to reduce illegal immigration by eliminating job opportunities for unauthorized aliens, on the assumption that aliens enter the United States illegally in search of employment; and

WHEREAS, the Town Council of the Town of Apple Valley (Apple Valley) believes that the strict enforcement of the IRCA and other applicable federal, state and local laws which prohibit the employment of unauthorized aliens, will protect local jobs and provide greater employment opportunities for citizens or nationals of the United States, aliens lawfully admitted for permanent residence, and others who are legally documented and entitled to work in the United States; and

WHEREAS, the IRCA imposes a regulatory burden on all employers making it unlawful to knowingly employ or continue to employ any unauthorized alien, and imposing criminal and civil penalties for violations; and

WHEREAS, the IRCA requires employers to verify and document the identity and employment authorization of every employee, and to confirm that every person hired is not an unauthorized alien; and

WHEREAS, Apple Valley recognizes that employment discrimination on the basis of national origin is prohibited against any person other than an unauthorized alien (8 U.S.C. § 1324 (a)(1), and does not intend, by adoption of this Resolution, to condone or encourage illegal discrimination or any action which is expressly prohibited or preempted by any federal or state law; and

WHEREAS, as used in this Resolution, the term “unauthorized alien” shall mean an alien who is neither a permanent resident nor authorized to be employed in the United States, as defined in the IRCA at 8 U.S.C. § 1324a(h)(3); and

WHEREAS, the Town Council wishes to ensure that each holder of a Town business license is in full compliance with the IRCA, and all other applicable federal, state and local laws enacted to ensure that unauthorized aliens are not employed in the Town; and that employers in the Town ensure that their employees are fully documented and authorized to work in the United States.

NOW, THEREFORE, BE IT RESOLVED, ORDERED AND DIRECTED as follows:

1. That the following term and condition shall be included in Town business license applications:

“The employer shall strictly comply with all federal, state and local laws and regulations, including, but not limited to the Immigration Reform and Control Act of 1986, codified at 8 U.S.C. §§ 1324a and 1324b (the “IRCA”), which require and ensure the hiring and retention of employees who are United States citizens, permanent residents and/or who are otherwise authorized by law to work in the United States of America, and, as required by the IRCA, shall affirmatively verify the identity and employment authorization of every employee as a condition of employment or continued employment.

I hereby acknowledge I have read and shall comply with the above stated requirement. I further understand that any violation of this agreement may subject this business license to revocation by the Town of Apple Valley.”

2. The Town of Apple Valley may pursue its legal rights and responsibilities to the fullest extent allowed by law in reporting any known or suspected violations of the IRCA, or any other federal, state or local laws, in ensuring that unauthorized aliens are not employed by the Town or by a holder of Town business license.
3. The Town Manager may initiate business license revocation proceedings pursuant to Section 5.02.230 of the Town of Apple Valley Municipal Code upon determining that a license holder is in violation of the IRCA.

APPROVED AND ADOPTED by the Apple Valley Town Council this 10th day of October, 2006.