



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

December 3, 2013

Ordinance 17706

Proposed No. 2013-0285.3

Sponsors Gossett, McDermott and Phillips

1 AN ORDINANCE related to how the county will honor
2 civil immigration hold requests from the United States
3 Immigration and Customs Enforcement for individuals in
4 the custody of the department of adult and juvenile
5 detention; and adding a new section to K.C.C. chapter 2.15.

6 STATEMENT OF FACTS:

- 7 1. King County was renamed in honor of the Reverend Doctor Martin
8 Luther King, Jr., and is a "home rule" government under Article XI,
9 Section 4, of the Washington State Constitution. Under its home rule
10 power, the county may exercise any power and perform any function,
11 unless preempted by state or federal law, relating to its government and
12 affairs, including the power to regulate for the protection and rights of its
13 inhabitants.
- 14 2. The enforcement of civil immigration laws has traditionally been, and
15 continues to be, the responsibility primarily of the federal government.
16 Since 2002, immigration enforcement operations have been carried out by
17 the United States Immigration and Customs Enforcement, a division of the
18 Department of Homeland Security, which was, before 2002, known as the
19 Immigration and Naturalization Service.

20 3. Since the 1980s, the Immigration and Naturalization Service and
21 Immigration and Customs Enforcement have been apprehending
22 noncitizens arrested and detained by state and local criminal justice
23 systems through numerous enforcement operations, primarily through
24 some variation of the Criminal Alien Program. Under the program,
25 federal agents use booking and other information provided by local law
26 enforcement agencies to target noncitizens in local agency custody for the
27 placement of administrative immigration detainer requests that can result
28 in a direct transfer upon release of noncitizens from local custody into
29 immigration custody for initiation of removal proceedings.

30 4. In 2008, Congress directed the Department of Homeland Security to
31 expand efforts to target noncitizens with serious criminal convictions for
32 apprehension and removal. In response, the Department of Homeland
33 Security, through Immigration and Customs Enforcement, created the
34 Secure Communities program to complement its efforts under the
35 Criminal Alien Program initiative. The key component of the Secure
36 Communities program is automated information sharing between the
37 Department of Homeland Security and the Federal Bureau of
38 Investigation, primarily the sharing of fingerprint data collected from local
39 jails for identifying individuals incarcerated in local facilities to be
40 investigated for immigration proceedings.

41 5. Like the Criminal Aliens Program, noncitizens identified through the
42 Secure Communities program and targeted for Immigration and Customs

43 Enforcement apprehension can be subjected to placement of a detainer
44 request while in custody of local jail officials. According to 9 C.F.R. Sec.
45 287.7(a), "A detainer serves to advise another law enforcement agency
46 that the federal Department of Homeland Security seeks custody of an
47 alien presently in the custody of that agency, for the purpose of arresting
48 and removing the alien. The detainer is a request that such agency advise
49 the department, prior to release of the alien, in order for the department to
50 arrange to assume custody, in situations when gaining immediate physical
51 custody is either impracticable or impossible."

52 6. Since April 2012, Immigration and Customs Enforcement investigators
53 have had access to all fingerprint data transmitted to federal authorities
54 from jails in the state of Washington. Local jails have no discretion to opt
55 out of participation in the Secure Communities program.

56 7. King County is dedicated to providing all of its residents fair and equal
57 access to services, opportunities and protection. In K.C.C. 2.10.210, the
58 King County Strategic Plan declares as part of the "fair and just principle"
59 that determinants of equity include "(c)ommunity and public safety that
60 includes services such as fire, police, emergency medical services and
61 code enforcement that are responsive to all residents so that everyone feels
62 safe to live, work and play in any neighborhood of King County and a law
63 and justice system that provides equitable access and fair treatment for all.
64 K.C.C. 2.15.010 was enacted in 2009 to specifically ensure that all county
65 residents have access to necessary services and benefits essential for

66 upholding the county's commitment to fair and equal access for all
67 residents. To further this policy, K.C.C. 2.15.010 established the
68 requirement that no county office, department, employee, agency or agent
69 shall condition the provision of county services on the citizenship or
70 immigration status of any individual. K.C.C. 2.15.010 also established the
71 requirement that sheriff's office personnel shall not request specific
72 documents relating to a person's civil immigration status for the sole
73 purpose of determining whether the individual has violated federal civil
74 immigration laws.

75 8. In accordance with those code requirements, the department of adult
76 and juvenile detention does not endeavor to determine the immigration
77 status of any individual held in county detention. However, it is the
78 current practice of the county to honor all civil immigration hold requests
79 from Immigration and Customs Enforcement for detainees, whether
80 identified through Criminal Alien Program or the Secure Communities
81 program, by holding adult inmates for additional time after they would
82 otherwise be released from county jail facilities.

83 9. It is often unclear whether the individual under investigation by
84 Immigration and Customs Enforcement is being reviewed because of their
85 criminal history or due to prior immigration administrative violations.

86 10. Although the intended focus of programs like Secure Communities is
87 the removal of individuals with serious criminal records, data released by
88 Immigration and Customs Enforcement indicate that, between 2008 and

89 2011, seventy-eight percent of the detainer requests issued against
90 individuals at the county adult jail involved individuals with no criminal
91 records or convictions.

92 11. On March 26, 2013, the University of Washington released
93 Immigration Detainer Requests in King County Washington: Costs &
94 Consequences, a report analyzing jail data from 2011 and assessing the
95 impacts of submitting to Immigration and Customs Enforcement's
96 immigration detainer requests. The report concluded that four out of five
97 individuals subjected to Immigration and Customs Enforcement detainer
98 requests in 2011 had never been convicted of a felony. It also found that
99 Immigration and Customs Enforcement detainer requests
100 disproportionately impacted Latinos.

101 12. On February 11, 2013, the executive notified councilmembers by
102 letter that he supports amending county code to include policy direction
103 for the department of adult and juvenile detention to limit the
104 circumstances under which it will exercise its authority to honor federal
105 immigration detainers to individuals for whom the federal government has
106 documented the individuals' criminal history as demonstrated by having
107 been previously convicted of committing a violent or serious offense.

108 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

109 SECTION 1. Findings:

110 A. In its deliberations on this legislation, the council has received public
111 testimony from various individuals, organizations, and immigrant advocates in King

112 County who recounted numerous instances where the exercise of federal detainers by the
113 department of adult and juvenile detention has resulted in significant distrust of local law
114 enforcement, dislocation of families, the loss of jobs and housing, economic loss to
115 families and the community, and harm to children. Many testified through public input
116 and the submission of written testimony that there are significant costs to the community,
117 both in dollars and human suffering when families become broken and dependent when
118 the family breadwinner is detained or deported. Testimony established that the threat of
119 deportation for the immigrant community is so strong that many persons are afraid to
120 report domestic violence or witnessed crime. Further, many noted that children who are
121 English-speaking U.S. citizens of an undocumented parent are uniquely vulnerable to the
122 impacts of the exercise of federal detainers.

123 B. Data from the University of Washington study of detainers in King County
124 shows that the county incurs significant costs resulting from honoring these detainers that
125 by federal law are not reimbursed. As a result, the county incurs costs for supporting
126 federal immigration enforcement efforts in a time when it is unable to fully fund its own
127 local mandates such as unincorporated sheriff's patrol or other priorities such as human
128 services programs for victims of domestic violence and the mentally ill.

129 C. Testimony from the King County sheriff and the interim chief of police for the
130 Seattle Police Department noted that even the perception that local governments are
131 cooperating with federal immigration enforcement efforts can significantly undermine the
132 operations of local government. In particular, this perception can have a substantial
133 damaging effect on the relationships between local law enforcement agencies and

134 immigrant and refugee communities and this damage to trust between the immigrant
135 community and law enforcement results in less public safety.

136 D. In its deliberations, the council also considered significant national and
137 Washington State data that showed that the vast majority of Immigration and Customs
138 Enforcement detainers are for individuals with no non-immigration criminal history, or
139 for those with minor offenses. The council also considered data showing that a
140 significant proportion of those who are taken into federal custody as a result of a detainer
141 are subsequently released back into the community and not detained or deported.

142 E. Individuals being released from state custody are persons who are legally
143 required to be released, except when being temporarily held as a result of a federal
144 immigration detainer request. They do not include persons who present a danger to the
145 community that can be addressed by state criminal or civil legal proceedings. There is no
146 basis to predict potential future dangerousness for such persons and hold them in state
147 custody as a result. There is only a minimal and speculative risk of harm to public safety
148 that might result from not honoring federal detainers for the individuals who do not have
149 a demonstrable and significant criminal history.

150 F. The county council has now considered and balanced the competing policy
151 concerns, advantages, and possible risks of amending the county code to limit the
152 circumstances under which the department of adult and juvenile detention will exercise
153 its authority to honor federal immigration detainers. The council recognizes that the cost
154 to public trust in law enforcement, economic losses, and human suffering when weighed
155 against the potential benefits of from exercising a detainer compels the council to limit
156 and focus the circumstances under which it will honor federal detainers. The council has

157 chosen to limit detainers to only those who have a demonstrable and significant criminal
158 history and therefore might present some risk to public safety. The council has
159 determined that the benefit of not honoring detainers for those who have immigration
160 violations or minor criminal histories outweighs the costs to the county. Finally, this
161 policy will further advance the county policy of providing all county residents with fair
162 and equal access to services, opportunities and protection, and is essential to that policy.

163 NEW SECTION. SECTION 2. There is hereby added to K.C.C. chapter 2.15 a
164 new section to read as follows:

165 A. It is the policy of the county to only honor civil immigration hold requests
166 from United States Immigration and Customs Enforcement for individuals who have
167 been convicted of a violent or serious crime. The department of adult and juvenile
168 detention may hold individuals for an additional forty-eight hours after they would
169 otherwise be released only upon receipt of a written immigration hold request by a
170 federal agent to detain a county inmate for suspected violations of federal civil
171 immigration law, where one or more of the following apply:

172 1. United States Immigration and Customs Enforcement agents provide written
173 documentation and case identifying information that the individual has been previously
174 convicted of a homicide at any time in the past; or that the individual either has been
175 convicted of a violent, serious, sex, or serious traffic offense within the past ten years or
176 within the past ten years has been released from prison after serving a sentence for a
177 violent, serious, sex, or serious traffic offense conviction. For purposes of this section,
178 "has been convicted of a violent, serious, sex or serious traffic offense" means the
179 individual was convicted of a most serious offense as defined in RCW 9.94A.030, a sex

180 offense as defined in RCW 9A.44, a conviction of any sexual exploitation of a children
181 offense as defined in RCW 9.68A, residential burglary as defined in RCW 9A.52.025,
182 drive-by shooting as defined in RCW 9A36.045, convicted of an offense of unlawful
183 possession of a firearm as defined in RCW 9.41.040, a conviction of an offense with a
184 firearm enhancement as defined in RCW 9.94A.533, or convicted of two or more serious
185 traffic offenses as defined in RCW 9.94A.030; or where United States Immigration and
186 Customs Enforcement agents provide written documentation that an individual has
187 identified through United States immigration court proceedings as an inadmissible alien
188 under 8 USC Section 1182(a)(2)(G), Foreign Government Officials who have committed
189 particularly severe violations of religious freedom; 8 U.S.C. Section 1182(a)(3), Security
190 and related grounds (terrorist activities, totalitarian parties, Nazi collaborators and
191 recruitment of child soldiers); or 8 U.S.C. 1182(a)(10)(C) International child abduction:
192 or

193 2. United States Immigration and Customs Enforcement agents provide written
194 documentation and case identifying information that the individual has been convicted in
195 any jurisdiction of an offense that, if committed in the state of Washington would meet
196 the criteria outlined in subsection A.1. of this section.

197 B. Notwithstanding subsection A. of this section, the county shall not honor civil
198 immigration hold requests for any individuals who are younger than eighteen years old.

199 C. This section does not create or form the basis for liability on the part of the
200 county, its officers, employees or agents.

201 D. Beginning January 1, 2014, the department of adult and juvenile
202 detention shall compile a listing all immigration detainees received by the

203 department. Beginning May 1, 2014, the department shall prepare and transmit to
204 the council a quarterly report showing the number of detainees received and
205 descriptive data that includes but is not limited to: the types of offenses that
206 individuals with detainees were being held, the reason for release from county
207 custody, the length of stay for each individual before the detainee was executed
208 for those who were released from county custody, and the number of individuals
209 that had detainees but were transferred to state department of corrections' custody.
210 The reports called for in this section shall be transmitted in the form of a paper
211 original and an electronic copy to the clerk of the council, who shall distribute
212 electronic copies to all councilmembers and the lead staff for the committee of the
213 whole, and the law, justice, health and human services committee, or their
214 successors.

215 E. The executive shall convene an immigration detainee oversight group to
216 review the implementation of the county's limitations on immigration detainee requests as
217 outlined in subsection A.1. of this section. The oversight group shall include but not be
218 limited to: the executive or the executive's designee; the director of the department of
219 public defense or the director's designee; the prosecuting attorney or the prosecuting
220 attorney's designee; the presiding judge of the superior court or the presiding judge's
221 designee; and two representatives appointed by the county council, one of whom shall be
222 an immigrant's rights specialist and one of whom shall be a member of the King County
223 Bar Association. The members of the oversight group shall be appointed by the
224 executive and submitted to the council with a motion for confirmation. The executive
225 shall convene this group by July 1, 2014, and, with the help of King County criminal

226 justice agencies, provide this group with data on the detainees received by the county,
227 criminal history information on the individuals for whom detainees were honored, data on
228 the length-of-stay within county detention facilities for these individuals, and the
229 outcome of the court case that resulted in the individual being detained that led to them
230 being subject to a detainer. The executive shall also try to obtain data on the outcome of
231 the individuals' immigration proceedings after the honoring of the detainer. The
232 oversight group shall review this data to evaluate the impact of the limitations on
233 detainees and also to determine if any changes are needed in the county's policies and
234 develop a report with the group's conclusions and recommendations. The executive shall
235 also prepare a fiscal estimate of the cost of honoring federal detainees. The oversight
236 group shall review this data to evaluate whether it continues to be appropriate for the
237 county to honor any detainees or to cease honoring detainees as a county policy. The
238 group shall also review the county's existing systems to make recommendations on how
239 federal agents can use current information systems to identify when individuals will be
240 released from county custody in order for federal agents to take appropriate enforcement
241 actions upon release without the use of detainees or cost to the county. The group shall
242 also review how the county could enhance its information systems to provide greater
243 public notification of when individuals will be released from county custody.

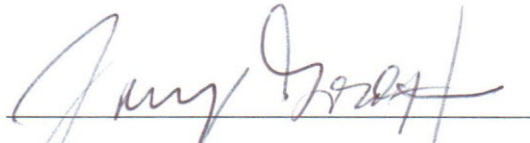
244 By January 31, 2015, the executive shall prepare a report summarizing the data reviewed
245 by the oversight group, include the report of the oversight group, and include the group's
246 proposed recommendations for proposed changes to the county's policies. The executive shall
247 transmit the report, supporting data, and recommendations to the clerk of the council. The report
248 called for in this section shall be transmitted in the form of a paper original and an electronic copy

249 to the clerk of the council, who shall distribute electronic copies to all councilmembers and the
250 lead staff for the committee of the whole and the law, justice, health and human services
251 committee, or their successors.
252


Ordinance 17706 was introduced on 6/17/2013 and passed as amended by the Metropolitan King County Council on 12/2/2013, by the following vote:

Yes: 5 - Mr. Phillips, Mr. Gossett, Ms. Hague, Ms. Patterson and Mr. Dembowski
No: 4 - Mr. von Reichbauer, Ms. Lambert, Mr. Dunn and Mr. McDermott
Excused: 0

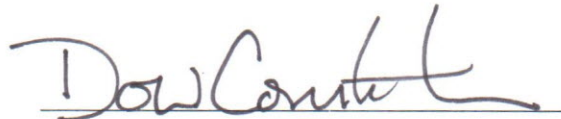
KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Larry Gossett, Chair

ATTEST:


Anne Noris, Clerk of the Council

APPROVED this 10 day of DECEMBER, 2013.


Dow Constantine, County Executive

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KING COUNTY COUNCIL

Attachments: None