



## 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

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

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

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

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Findings:

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

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

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

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

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

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

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

F. The county council has now considered and balanced the competing policy concerns, advantages, and possible risks of amending the county code to limit the circumstances under which the department of adult and juvenile detention will exercise its authority to honor federal immigration detainers. The council recognizes that the cost to public trust in law enforcement, economic losses, and human suffering when weighed against the potential benefits of from exercising a detainer compels the council to limit 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 detainers received and  
205 descriptive data that includes but is not limited to: the types of offenses that  
206 individuals with detainers were being held, the reason for release from county  
207 custody, the length of stay for each individual before the detainer was executed  
208 for those who were released from county custody, and the number of individuals  
209 that had detainers 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 detainer oversight group to  
216 review the implementation of the county's limitations on immigration detainer 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

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

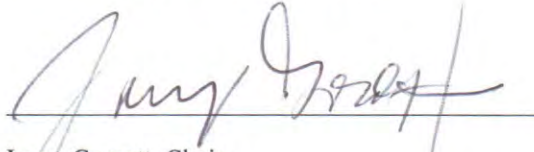
By January 31, 2015, the executive shall prepare a report summarizing the data reviewed by the oversight group, include the report of the oversight group, and include the group's proposed recommendations for proposed changes to the county's policies. The executive shall transmit the report, supporting data, and recommendations to the clerk of the council. The report 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

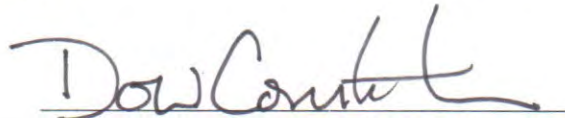
  
Larry Gossett, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 10 day of DECEMBER, 2013.



Dow Constantine, County Executive

Attachments: None

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CLERK  
KING COUNTY COUNCIL