

Legislation Text

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Clerk 02/27/2018

AN ORDINANCE enhancing the trust and fairness for King County immigrant communities; establishing requirements for how agencies, offices and employees will provide services to immigrants; establishing requirements for the department of adult and juvenile detention honoring of federal administrative detainers, granting access to inmates and sharing information; establishing translation assistance requirements for non-English speaking persons; providing a complaint process; establishing an immigrants and refugees fund; amending Ordinance 16692, Section 2, and K.C.C. 2.15.010 and Ordinance 17706, Section 2, as amended, and K.C.C. 2.15.020, adding new sections to K.C.C. chapter 2.15 and adding a new section to K.C.C. chapter 4A.200.

PREAMBLE:

It is hereby affirmed that Martin Luther King, Jr., County upholds justice and equity for all residents.

The Reverend Doctor Martin Luther King, Jr., County, named in honor of the Reverend Doctor Martin Luther King, Jr., is a "home rule" government under Article XI, Section 4, of the Washington State Constitution. Under its home rule power, the Reverend Doctor Martin Luther King, Jr., County may exercise any power and perform any function, unless preempted by state or federal law, relating to its government and affairs, including the power to regulate for the protection and rights of its inhabitants. To this end, the Reverend Doctor Martin Luther King,

Jr., County is dedicated to providing all of its residents fair and equal access to services, opportunities and protection.

Ensuring that all of the Reverend Doctor Martin Luther King, Jr., County's residents have access to necessary services and benefits is essential for upholding the county's commitment to fair and equal access for all residents.

The enforcement of civil immigration laws has historically been a federal government responsibility through the Immigration and Naturalization Service. Since 2002, matters of immigration law have been handled by the Immigration and Customs Enforcement, a branch of the Department of Homeland Security. The federal courts have determined that the enforcement of civil immigration laws are a federal responsibility.

King County seeks to protect the federal and state constitutional rights of all persons in Washington, including immigrants, by clearly articulating its policies and practices.

A goal of this ordinance is to foster trust and cooperation between law enforcement officials and immigrant communities to heighten crime prevention and public safety.

Since 1992, the Reverend Doctor Martin Luther King, Jr., County sheriff's office, has embraced this goal and outlined supporting policies in its operations manual, with which this ordinance is consistent.

In 2014, the county enacted Ordinance 17886, which ensured that the department of adult and juvenile detention would honor administrative detainers from the federal government only when certain conditions were met. Based on federal court decisions that determined that holding persons in custody based solely on a detainer is unconstitutional, the county limited the honoring of immigration detainers to only those accompanied by a judicial warrant.

Another goal of this ordinance is to promote the public health of the Reverend Doctor Martin Luther King, Jr., County residents.

On April 22, 2008, the Reverend Doctor Martin Luther King, Jr., County superior court affirmed the principle that our courts must remain open and accessible for all persons and families to resolve disputes on the merits by adopting a policy that warrants for the arrest of persons based on their immigration status shall not be executed within any of the superior court courtrooms unless directly ordered by the presiding judicial officer and shall be discouraged in the superior court courthouses, unless the public's safety is at immediate risk.

This ordinance is intended to be consistent with federal laws regarding communications between local jurisdictions and federal immigration authorities, including but not limited to United States Code Title 8, Section 1373.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

NEW SECTION. SECTION 1. There is hereby added to K.C.C. chapter 2.15 a new section to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

A. "Administrative warrant" means a noncriminal immigration warrant of arrest, order to detain or release aliens, notice of custody determination, notice to appear, removal order, warrant of removal or any other document, issued by ICE, CBP or USCIS that can form the basis for a person's arrest or detention for a civil immigration enforcement purpose. ICE administrative warrant forms include the U.S. DHS form I-200 (Rev. 09/16) "Warrant for Arrest of Alien" and Form I-205 "Warrant Of Removal/Deportation," as well as predecessor and successor versions. "Administrative warrant" does not include any criminal warrants issued upon a judicial determination of probable cause and in compliance with the Fourth Amendment to the United States Constitution.

B. "Agency" means a King County department, agency, division, commission, council, committee, board, other body or person, established by authority of an ordinance, executive order, or charter.

C. "Agent" means a person acting within the scope of employment by or acting on behalf of an agency.

D. "CBP" means the United States Customs and Border Protection agency of the United States Department of Homeland Security and shall include any successor federal agency charged with border enforcement.

E. "Citizenship or immigration status" means a person's recorded citizenship or immigration status, as such status is defined in the Immigration and Nationality Act, at the time an agent or agency receives the information.

F. "Civil immigration enforcement operation" means an operation that has as one of its objectives the identification or apprehension of a person or persons in order to investigate them for a violation of the immigration laws and subject them to one or more of the following:

1. Civil immigration detention;
2. Removal proceedings; and
3. Removal from the United States.

G. "Coerce" means to use express or implied threats towards a person or any family member of a person that attempts to put the person in immediate fear of the consequences in order to compel that person to act against the person's will.

H. "Commitment" means confinement in secure detention for a specified amount of time following a determination of guilt. "Commitment" does not include pretrial detention of any persons such as those who unable to post bail.

I. "Employee" means a person who is appointed as an employee by the appointing authority of a county agency, office, department, council, board, commission or other separate unit or division of county government, however designated, acting within the scope of employment by or acting on behalf of the county. "County employee" also includes a county elected official and a member of a county board, commission, committee or other multimember body, but does not include an official or employee of the county's judicial branch, though it

does include an employee of the department of judicial administration.

J. "ICE" means the United States Immigration and Customs Enforcement agency including Enforcement and Removal Operations and Homeland Security Investigations and shall include any successor federal agency charged with the enforcement of immigration laws.

K. "Immigration detainer" means a request by ICE to a federal, state or local law enforcement agency, such as the King County department of adult and juvenile detention, to provide notice of release or maintain custody of a person based on an alleged violation of a civil immigration law. "Immigration detainer" includes a detainer issued under Sections 236 or 287 of the Immigration and Nationality Act or 287.7 or 236.1 of Title 8 of the Code of Federal Regulations. "Immigration detainer" includes a detainer issued under DHS form I-274A entitled Immigration Detainer- Notice of Action, as well as well as predecessor and successor versions.

L. "Interpretation" means the transfer of an oral communication from one language to another.

M. "Limited-English-proficient" means a person who does not speak English as the person's primary language, who has a limited ability to read, speak, write, or understand English.

N. "Nonpublic" means any area of a county facility, including the secure detention facilities of the department of adult and juvenile detention that is not generally open and accessible to the general public, but instead requires special permission for admittance by a county employee on an individual basis.

O. "Personal information" means one or more of the following, when the information is linked with or is reasonably linkable, including via analytic technology, to the person's first name or first initial and last name:

1. Home address;
2. Work address;
3. Telephone number;
4. Electronic mail address;
5. Social media handle or other identifying social media information;
6. Any other means of contacting a person;

7. Social security number;
8. Driver's license number or Washington identification card number;
9. Bank account number or credit or debit card number;
10. Information or data collected through the use or operation of an automated license plate recognition system; and
11. User name that, in combination with a password or security question and answer, would permit access to an online account.

P. "Public communication materials" means materials that are intended for broad distribution to inform or educate people served by King County. For the purpose of translation, "public communication materials" refers only to printed media such as brochures, posters, booklets, pamphlets, billboards and advertisements in printed publications.

Q. "Translation" means the transfer of a written communication from one language to another while preserving the intent and essential meaning of the original text.

R. "USCIS" shall mean the United States Citizenship and Immigration Services and any successor agency charged with overseeing United States immigration laws.

S. "Verbal abuse" means the use of a remark which is overtly insulting, mocking or belittling directed at a person based upon the actual or perceived:

1. Race, color, sex, religion, national origin, English proficiency, sexual orientation or gender identity of the person; or
2. Citizenship or immigration status of the person or the person's family member.

T. "Vital documents" are materials that provide essential information for accessing basic county services and benefits and for which serious consequences would result if the information were not provided.

SECTION 2. Ordinance 16692, Section 2, and K.C.C. 2.15.010 are each amended to read as follows:

A. Except as otherwise provided in this section or when otherwise required by law, a Reverend Doctor

Martin Luther King, Jr., County office, department, employee, agency or agent shall not condition the provision of county services on the citizenship or immigration status of any ~~((individual))~~ person.

~~B.((1. Nothing in this section shall be construed to prohibit any King County officer or employee from participating in cross-designation or task force activities with federal law enforcement authorities.~~

~~2. The Reverend Doctor Martin Luther King, Jr., County sheriff's office personnel shall not request specific documents relating to a person's civil immigration status for the sole purpose of determining whether the individual has violated federal civil immigration laws. The documents include but are not limited to:~~

- ~~a. passports;~~
- ~~b. alien registration cards; or~~
- ~~c. work permits.~~

~~3. The Reverend Doctor Martin Luther King, Jr., County sheriff's office personnel may use documents relating to a person's civil immigration status if the documents are offered by the person upon a general, nonspecific request.~~

~~4. The Reverend Doctor Martin Luther King, Jr., County sheriff's office personnel shall not use stops for minor offenses or requests for voluntary information as a pretext for discovering a person's immigration status.~~

~~5. The Reverend Doctor Martin Luther King, Jr., County sheriff's office personnel shall not initiate any inquiry or enforcement action based solely on a person's:~~

- ~~a. civil immigration status;~~
- ~~b. race;~~
- ~~c. inability to speak English; or~~

~~d. inability to understand the deputy.))~~ All applications, questionnaires and interview forms used in relation to the provision of county benefits, opportunities or services shall be reviewed by each agency, and any question requiring disclosure of information related to citizenship or immigration status, unless required by

state or federal law, or international treaty, shall be, in the agency's best judgment, either deleted in its entirety or revised such that the disclosure of the information is no longer required. Agencies that have a need for the collection of demographic data related to immigration status for performance measurement shall identify mechanisms that will allow for the separation of the demographic information from personally identifying information.

C. The Seattle-King County department of public health shall not condition the provision of health benefits, opportunities or services on matters related to citizenship or immigration status. The Seattle-King County department of public health may inquire about or disclose information relating to a ~~((n individual's))~~ person's citizenship or immigration status for the purpose of determining eligibility for benefits or seeking reimbursement from federal, state or other third-party payers.

D. Except when otherwise required by law, where the county accepts presentation of a state-issued driver's license or identification card as adequate evidence of identity, presentation of a state-issued document marked as not valid for federal purposes or presentation of a photo identity document issued by the person's nation of origin, such as a driver's license, passport or ~~((matricula consular, which is a consulate-issued document,))~~ other consul-issued document, such as a Matrícula Consular de Alta Seguridad, shall also be accepted and shall not subject the person to a higher level of scrutiny or different treatment than if the person had provided a Washington state driver's license or identification card. However, a request for translation of such a document to English shall not be deemed a violation of any provision of ~~((Ordinance 16692 and any subsequent ordinance))~~ this chapter. This ~~((provision))~~ subsection does not apply to documentation required to complete a federal I-9 employment eligibility verification form.

E. ~~((This section does not create or form the basis for liability on the part of the county, its officers, employees or agents.~~

F. ~~Unless permitted by this section or otherwise required by state or federal law or international treaty, all applications, questionnaires and interview forms used in relation to the provision of county benefits,~~

~~opportunities or services shall be promptly reviewed by each agency, and any question requiring disclosure of information related to citizenship or immigration status shall be, in the agency's best judgment, either deleted in its entirety or revised such that the disclosure is no longer required.~~

~~The review and revision shall be completed within one hundred and eighty days of November 29, 2009.~~

)) A county employee or an agent or agency of King County shall not inquire about or request, from a member of the public information about the citizenship or immigration status or place of birth of any person unless the inquiry, request or investigation is required by state or federal law, regulation or directive or court order or rule, or to ensure compliance with any state or federal law, regulation or directive or court order. When an inquiry, request or investigation into nationality, immigration status or citizenship, including place of birth, is required to be or for any reason is made, the King County agent or county employee shall not attempt to coerce a response. All persons to whom the inquiries are made shall be explicitly informed of their right to decline to respond, free from fear or threat of retaliation.

F. Agents of King County and county employees are hereby prohibited from conditioning King County services on immigration status, except where required under applicable federal or state law or regulation or directive or court order or rule. Agents of King County and county employees are prohibited from verbally abusing or coercing persons or threatening to report them or their family members to ICE or threatening to take other immigration-related action against them or their family members.

G. Except where necessary to provide King County services, or where otherwise required by state or federal law or regulation or directive or court order, King County agents and employees are not permitted to either maintain or share, or both, personal information or information about national origin, race, ethnicity, language proficiency, religion, sexual orientation, gender identity, disability, housing status, financial status, marital status, status as a victim of domestic violence, criminal history, release date from incarceration or confinement in a secure detention or other custody or status as a veteran.

H. Nothing in this chapter shall be construed as to prohibit any county employee, upon request of the

noncitizen, from aiding a noncitizen to obtain immigration benefits pursuant federal immigration law.

I. An agent of King County or a county employee shall not expend any time, moneys or other resources on facilitating the civil enforcement of federal immigration law or participating in civil immigration enforcement operations, except where state or federal law, regulation or court order shall so require. However, a county agency, employee or agent is not prohibited from sending to, or receiving from, federal immigration authorities, the citizenship or immigration status of a person. Also, nothing in this section prohibits any county agency from sending to, receiving from, requesting from or exchanging with any federal, state or local government agency information regarding the immigration status of a person or from maintaining such information.

J. Nothing in this section shall be construed to prohibit any county employee from participating in cross -designation or task force activities with federal law enforcement authorities for criminal law enforcement.

K. The executive shall ensure that all King County employees and agents receive appropriate training on the implementation of the provisions of this section.

NEW SECTION. SECTION 3. There is hereby added to K.C.C. chapter 2.15 a new section to read as follows:

A. The King County sheriff's office shall not request specific documents relating to a person's civil immigration status from a member of the public, for the sole purpose of determining whether the person has violated federal civil immigration laws. The documents include but are not limited to:

1. Passports;
2. Alien registration cards; or
3. Work permits.

B. The sheriff's office may use documents relating to a person's civil immigration status if the documents are offered by the person upon a general, nonspecific request.

C. The sheriff's office shall not use stops for minor offenses or requests for voluntary information as a

pretext for discovering a person's immigration status.

D. The sheriff's office shall not initiate any inquiry of, or enforcement action against, a member of the public, based solely on a person's:

1. Civil immigration status;
2. Race;
3. Inability to speak English;
4. Inability to understand the sheriff's office personnel; or
5. Hit on the National Crime Information Center database.

SECTION 4. Ordinance 17706, Section 2, as amended, and K.C.C. 2.15.020 are each amended to read as follows:

A. ~~((It is the policy of the county to only honor civil immigration hold requests from United States Immigration and Customs Enforcement for individuals that are accompanied by a criminal warrant issued by a U.S. District Court judge or magistrate.~~

B. ~~The department of adult and juvenile detention shall compile a listing all immigration detainees received by the department, showing detainees received and detainees accompanied by federal judicial warrants. Beginning May 1, 2014, the department shall prepare and transmit to the council a quarterly report showing the number of detainees received and the number of detainees that were accompanied by a federal judicial warrant with descriptive data that includes but is not limited to: the types of offenses that individuals with detainees accompanied by a federal judicial warrant were being held, the reason for release from county custody, the length of stay for each individual before the detainer accompanied by a federal judicial warrant was executed, and the number of individuals that had detainees but were transferred to federal or state department of corrections' custody. The reports called for in this section shall be transmitted in the form of a paper original and an electronic copy to the clerk of the council, who shall distribute electronic copies to all councilmembers and the lead staff for the committee of the whole, and the law, justice, health and human services committee, or their successors.)) An agent~~

of King County or county employee shall not expend any time, moneys or other resources on facilitating the civil enforcement of federal immigration law or participating in civil immigration enforcement operations, except where state or federal law, regulation or court order or rule shall so require. However, a county agency, employee or agent not is prohibited from sending to, or receiving from, federal immigration authorities, the citizenship or immigration status of a person. Also, nothing in this section prohibits any county agency from sending to, receiving from, requesting from or exchanging with any federal, state or local government agency information regarding the immigration status of a person or from maintaining such information.

B. King County and its agents and departments and county employees shall not:

1. Enter into any contract, agreement or arrangement, whether written or oral, that would grant federal civil immigration enforcement authority or powers to King County or its agents or law enforcement officers, including but not limited to agreements created under 8 U.S.C. Sec. 1357(g) or Intergovernmental Service Agreements;

2. Honor immigration detainer requests or administrative warrants issued by ICE, CBP or USCIS, or hold any person upon the basis of an ICE, CBP or USCIS detainer request or administrative warrant unless such request or warrant is accompanied by a criminal warrant issued by a United States District Court judge or magistrate. The sheriff's office or the department of adult and juvenile detention personnel shall not carry out a civil arrest, detain a person after the release date set by a court or refuse to accept a bond based on an administrative warrant separately or in combination with an ICE detainer request;

3. For purposes of execution of federal civil immigration enforcement, permit ICE, CBP or USCIS officers, agents or representatives access to nonpublic areas of King County's facilities, property, equipment or nonpublic databases, or nonpublic portions of otherwise public databases, or people in King County's custody, absent a judicial criminal warrant specifying the information or persons sought unless otherwise required by state or federal law. Any warrantless attempts or requests for access to those facilities, property, equipment or

nonpublic databases shall be immediately sent to the department or agency director or their designee responsible for the operation of the facility, property, database or equipment. Permission to access any such a facility, property, equipment or nonpublic database without a judicial criminal warrant may only be provided with the express, written approval of the appropriate person. Any detention facilities, including secure detention facilities, prisons and halfway houses, that King County contracts with or leases land to for the purposes of criminal or civil detention must include the requirement in this subsection B.3. in any contract with King County; and

4. Provide personal information to federal immigration authorities for purpose of civil immigration enforcement, except as required by state or federal law, about any person, including place of birth or household members, the services received by the person or the person's next court date or release date, absent a warrant signed by a judge or a law requiring disclosure.

C. It is the policy of King County to obtain the minimum information required under RCW 10.70.140 and to provide it to immigration officials after the person has been convicted and sentenced. In complying with RCW 10.70.140, the department of adult and juvenile detention personnel shall only inquire as to the nationality of persons who have been committed to secure detention after an adjudication of guilt and imposition of sentence. The preceding sentence only applies to the department of adult and juvenile detention's direct inquiries of persons committed to secure detention, and not to interactions with other governmental entities. Only persons who self-identify as being nationals of a country other than the United States shall be subject to the notification requirements of RCW 10.70.140.

D.1. If permission to access a King County detention facility without a judicial criminal warrant is granted to ICE, CBP or USCIS in accordance with subsection B.3. of this section for the purpose of conducting an interview which does not relate to civil immigration enforcement between either ICE or CBP, or both, and a person who is in the custody of the department of adult and juvenile detention, the department of adult and juvenile detention shall provide the person with an oral explanation and a written consent form

that explains the purpose of the interview, that the interview is voluntary and that the person may decline to be interviewed or may choose to be interviewed only with the person's attorney present. The form shall state explicitly that the person will not be punished or suffer retaliation for declining to be interviewed. The form shall be available in English, Spanish and any other language identified by the county's language assistance plan as established in section 6.B. of this ordinance and explained orally to a person who is unable to read the form. Either ICE or CBP officials, or both, shall only be permitted to interview persons who have consented in writing to be interviewed, absent a judicial criminal warrant.

2. Upon receiving any ICE hold, notification or transfer request, department of adult and juvenile detention personnel shall provide a copy of the request to the person and inform the person whether the department intends to comply with the request.

3. Consistent with Article 36 of the Vienna Convention on Consular Relations, any person in custody or detention shall be informed through the person's attorney of the right to communicate with the consular post of a country of which the person is a national, if other than the United States, and informed that the person's consular officers have the right to visit, converse or correspond with the person, if the person wishes the communication. If a person chooses to disclose that the person is a foreign national and requests consular notification, the custodian shall contact the appropriate consulate. The informed consent requirements of the Vienna Convention on Consular Relations shall apply to all such inquiries. The same requirements shall apply to inquiries into nationality status for the purpose of complying with mandatory consular notification under any bilateral consular convention. In all cases, identification as a foreign national shall be voluntary and based on informed consent by the person.

4. King County shall consider all records relating to ICE, CBP or USCIS access to facilities and information, including all communications with ICE, CBP or USCIS to be public records for purposes of chapter 42.56, the state Public Records Act, and King County shall handle all such requests in accordance with the usual procedures for receipt of public records requests.

SECTION 5. K.C.C. 2.15.020 subsections D.1. and D.2 shall be implemented by June 1, 2018.

NEW SECTION. SECTION 6. There is hereby added to K.C.C. chapter 2.15 a new section to read as follows:

A.1. King County and all its contractors shall provide free interpretation and translation services as required by this chapter to limited-English-proficient persons. When a limited-English-proficient person seeks or receives benefits or services from a local agency, office or contractor, the agency, office or contractor shall make reasonable efforts provide prompt interpretation services in all interactions with the person, whether the interaction is done remotely or in person. King County agencies and offices shall either employ sufficient qualified bilingual employees or contract with remote language services to provide interpretation services in languages spoken by limited-English-proficient county residents.

2. The agency, office or contractor shall meet its obligation to provide prompt interpretation services for purposes of this subdivision by ensuring that limited-English-proficient persons do not have to wait unreasonably longer to receive assistance than persons who do not require interpretation services. King County agencies shall provide support to contractors to meet the requirements of this section.

3. Where an application or form administered by King County requires completion in English by a limited-English-proficient person for submission to a local, state or federal authority, King County or its contractor shall make reasonable efforts to provide oral interpretation of the application or form as well as acknowledgement by the limited-English-proficient person that the form was translated and completed by an interpreter. King County agencies shall provide support to contractors to meet the requirements of this section.

B. King County agencies and offices shall develop language assistance plans that identify which of its vital documents and public communication materials need to be translated into languages for use by limited-English-proficient persons. The plans should also include identification of agency or office plans for providing translation of webpages, automated telephonic greetings, automated telephonic voice messages and

informational signage. The threshold for the translation of vital documents and public communication materials shall be based on the top six languages identified by the tier map of limited-English-proficient persons maintained by the office of equity and social justice and the county demographer.

SECTION 7. The executive shall submit the language assistance plans required in section 6 of this ordinance and a motion that accepts the plans to the county council by September 30, 2018. The language assistance plans called for in this section shall be transmitted in the form of a paper original and an electronic copy to the clerk of the council, who shall distribute electronic copies to all councilmembers and the lead staff for the committee of the whole, the law and justice committee, the health, housing and human services committee or their successors.

SECTION 8. NEW SECTION. There is hereby added to K.C.C. chapter 2.15 a new section to read as follows:

A person who has been injured or otherwise sustained damages as a result of a violation of this chapter may file a complaint with the King County office of civil rights in accordance with K.C.C. 12.22.040.

SECTION 9. NEW SECTION. There is hereby added to K.C.C. chapter 2.15 a new section to read as follows:

In accordance with 8 U.S.C. Sec. 1373, nothing in this chapter prohibits any county agency, agent or employee from sending to, or receiving from, federal immigration authorities, the citizenship or immigration status of a person. Also, nothing in this chapter prohibits any county agency from sending to, receiving from, requesting from or exchanging with any federal, state or local government agency information regarding the immigration status of a person or from maintaining such information.

SECTION 10. NEW SECTION. There is hereby added to K.C.C. chapter 4A.200 a new section to read as follows:

- A. There is hereby created the immigrant and refugee assistance fund.
- B. The fund shall be a first tier fund.

C. The director of the department of executive services shall be the manager of the fund.

D. The fund shall be used to collect revenue from state, local and other funding sources and to expend direct service and related administration dollars to provide legal representation for indigent immigrants and refugees in deportation proceedings in immigration court and to support citizenship services for these citizens. The fund may also be used for English language classes for immigrants and refugees.

SECTION 11. Severability. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.