



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

September 3, 2014

Ordinance 17886

Proposed No. 2014-0297.2

Sponsors Gossett, McDermott, Dembowski,
Phillips and Upthegrove

1 AN ORDINANCE ending the honoring of civil
2 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 amending Ordinance 17706, Section 2, and
6 K.C.C. 2.15.020.

7 STATEMENT OF FACTS:

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

19 Department of Homeland Security, which was, before 2002, known as the
20 Immigration and Naturalization Service.

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

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

42 5. Like the Criminal Aliens Program, noncitizens identified through the
43 Secure Communities program and targeted for Immigration and Customs
44 Enforcement apprehension can be subjected to placement of a detainer
45 request while in custody of local jail officials. According to 9 C.F.R. Sec.
46 287.7(a), "A detainer serves to advise another law enforcement agency
47 that the federal Department of Homeland Security seeks custody of an
48 alien presently in the custody of that agency, for the purpose of arresting
49 and removing the alien. The detainer is a request that such agency advise
50 the department, prior to release of the alien, in order for the department to
51 arrange to assume custody, in situations when gaining immediate physical
52 custody is either impracticable or impossible." There is no judicial review
53 of a detainer.

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

58 7. King County is dedicated to providing all of its residents fair and equal
59 access to services, opportunities and protection. In K.C.C. 2.10.210, the
60 King County Strategic Plan declares as part of the "fair and just principle"
61 that determinants of equity include "(c)ommunity and public safety that
62 includes services such as fire, police, emergency medical services and
63 code enforcement that are responsive to all residents so that everyone feels
64 safe to live, work and play in any neighborhood of King County and a law

65 and justice system that provides equitable access and fair treatment for all.
66 K.C.C. 2.15.010 was enacted in 2009 to specifically ensure that all county
67 residents have access to necessary services and benefits essential for
68 upholding the county's commitment to fair and equal access for all
69 residents. To further this policy, K.C.C. 2.15.010 established the
70 requirement that no county office, department, employee, agency or agent
71 shall condition the provision of county services on the citizenship or
72 immigration status of any individual.

73 8. In accordance with those code requirements, the department of adult
74 and juvenile detention does not endeavor to determine the immigration
75 status of any individual held in county detention. However, it had been
76 the practice of the county to honor all civil immigration hold requests from
77 Immigration and Customs Enforcement for detainees by holding adult
78 inmates for additional time after they would otherwise be released from
79 county jail facilities.

80 9. The majority of federal immigration proceedings are civil, not criminal.
81 According to Arizona v. U.S., 132 S.Ct. at 2505, "(a)s a general rule, it is not a
82 crime for a removable alien to remain present in the United States." Civil
83 immigration proceedings are conducted in a United States Department of Justice
84 Immigration Court, not in a United States District Court. Therefore, unless an
85 arrestee is being federally prosecuted for a criminal immigration violation,
86 Immigration and Customs Enforcement is not a party to a federal court
87 proceeding, and Immigration and Customs Enforcement officials would not

88 ordinarily have access to a federal magistrate or judge for the issuance of judicial
89 warrant.

90 10. In 2013, the metropolitan King County council held multiple meetings
91 to discuss the policy of honoring civil immigration holds and developed
92 policy that would restrict how the county honored federal detainer
93 requests.

94 11. Ordinance 17706, enacted on December 2, 2013, placed in county
95 code the policy that the department of adult and juvenile detention would
96 only honor federal civil immigration holds if an inmate has been convicted
97 of a violent, serious and that federal agents submit written documentation
98 and case identifying information establishing criminal history.

99 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

100 SECTION 1. Findings:

101 A. In its deliberations related to Ordinance 17706, the council received public
102 testimony from various individuals, organizations, and immigrant advocates in King
103 County who recounted numerous instances where the exercise of federal detainees by the
104 department of adult and juvenile detention has resulted in significant distrust of local law
105 enforcement, dislocation of families, the loss of jobs and housing, economic loss to
106 families and the community, and harm to children. Many testified through public input
107 and the submission of written testimony that there are significant costs to the community,
108 both in dollars and human suffering when families become broken and dependent when
109 the family breadwinner is detained or deported. Testimony established that the threat of
110 deportation for the immigrant community is so strong that many persons are afraid to

111 report domestic violence or witnessed crime. Further, many noted that children who are
112 English-speaking United States citizens of an undocumented parent are uniquely
113 vulnerable to the impacts of the exercise of federal detainers.

114 B. King County adopted policy in Ordinance 17706 that restricts the department
115 of adult and juvenile detention from honoring civil immigration detainers except for
116 inmates with a history of one or more of the following: conviction in the State of
117 Washington of specific enumerated violent or serious crimes; conviction anywhere
118 worldwide of an equivalent violent or serious crime; and finding in federal immigration
119 court that the inmate is an inadmissible alien due to commission of crimes or activities
120 threatening security or human rights anywhere worldwide. The county's policy requires
121 federal agents to provide the department of adult and juvenile detention with
122 documentation and case identifying information establishing that the inmate meets one or
123 more of these criteria. However, Immigration and Customs Enforcement announced that
124 it will not do so, and have not done so. Faced with the lack of cooperation, the county
125 has not honored detainers except for those accompanied by a judicial warrant.

126 C. In March 2014, the United States Court of Appeals, Third Circuit, issued a
127 decision in *Galarza v. Szalczyk*, holding that a federal detainer alone does not shield local
128 municipalities from liability. In its decision, the court held that when a municipality holds
129 an inmate on a civil immigration detainer, but there was no probable cause to support the
130 detainer, the municipality can be liable for damages.

131 D. Two other federal trial court decisions quickly followed the *Galarza* decision:
132 *Maria Miranda-Olivares v. Clackamas County* (District of Oregon); and *Villars v.*
133 *Kubiatowski* (N.D. Illinois). These cases resembled *Galarza*, with detainers that lacked

134 any accompanying documentation such as a judicial warrant or an affidavit of probable
135 cause. As in Galarza, the respective courts ruled that a decision to honor an Immigration
136 and Customs Enforcement detainer is discretionary, not mandatory. Further, the District
137 Court ruled that Clackamas County violated Miranda-Olivares's constitutional Fourth
138 Amendment rights against illegal seizure and unlawfully detained her, and that the
139 detainer did not shield the county from liability. The Illinois District Court found that
140 detaining the plaintiff on a detainer without further probable cause is unconstitutional and
141 lead to several causes of actions including conspiracy and equal protection violation.
142 Consequently, local jurisdictions that honor detainers unaccompanied by evidence of
143 judicial review can be liable for detaining an inmate on a civil detainer when the inmate
144 is legally entitled to release.

145 E. The federal court decisions indicating that local jurisdictions could be liable in
146 instances where they honored civil immigration detainers occurred after the county's
147 enactment of policies that would honor some detainers.

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

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

157 ~~1. United States Immigration and Customs Enforcement agents provide written~~
158 ~~documentation and case identifying information that the individual has been previously~~
159 ~~convicted of a homicide at any time in the past; or that the individual either has been~~
160 ~~convicted of a violent, serious, sex, or serious traffic offense within the past ten years or~~
161 ~~within the past ten years has been released from prison after serving a sentence for a~~
162 ~~violent, serious, sex, or serious traffic offense conviction. For purposes of this section,~~
163 ~~"has been convicted of a violent, serious, sex or serious traffic offense" means the~~
164 ~~individual was convicted of a most serious offense as defined in RCW 9.94A.030, a sex~~
165 ~~offense as defined in RCW 9A.44, a conviction of any sexual exploitation of a children~~
166 ~~offense as defined in RCW 9.68A, residential burglary as defined in RCW 9A.52.025,~~
167 ~~drive by shooting as defined in RCW 9A36.045, convicted of an offense of unlawful~~
168 ~~possession of a firearm as defined in RCW 9.41.040, a conviction of an offense with a~~
169 ~~firearm enhancement as defined in RCW 9.94A.533, or convicted of two or more serious~~
170 ~~traffic offenses as defined in RCW 9.94A.030; or where United States Immigration and~~
171 ~~Customs Enforcement agents provide written documentation that an individual has~~
172 ~~identified through United States immigration court proceedings as an inadmissible alien~~
173 ~~under 8 USC Section 1182(a)(2)(G), Foreign Government Officials who have committed~~
174 ~~particularly severe violations of religious freedom; 8 U.S.C. Section 1182(a)(3), Security~~
175 ~~and related grounds (terrorist activities, totalitarian parties, Nazi collaborators and~~
176 ~~recruitment of child soldiers); or 8 U.S.C. 1182(a)(10)(C) International child abduction:~~
177 ~~or~~

178 ~~2. United States Immigration and Customs Enforcement agents provide written~~
179 ~~documentation and case identifying information that the individual has been convicted in~~

180 ~~any jurisdiction of an offense that, if committed in the state of Washington would meet~~
181 ~~the criteria outlined in subsection A.1. of this section.~~

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

184 ~~C. This section does not create or form the basis for liability on the part of the~~
185 ~~county, its officers, employees or agents)) that are accompanied by a criminal warrant~~
186 ~~issued by a U.S. District Court judge or magistrate.~~

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

203 ~~((E. The executive shall convene an immigration detainer oversight group to~~
204 ~~review the implementation of the county's limitations on immigration detainer requests as~~
205 ~~outlined in subsection A.1. of this section. The oversight group shall include but not be~~
206 ~~limited to: the executive or the executive's designee; the director of the department of~~
207 ~~public defense or the director's designee; the prosecuting attorney or the prosecuting~~
208 ~~attorney's designee; the presiding judge of the superior court or the presiding judge's~~
209 ~~designee; and two representatives appointed by the county council, one of whom shall be~~
210 ~~an immigrant's rights specialist and one of whom shall be a member of the King County~~
211 ~~Bar Association. The members of the oversight group shall be appointed by the~~
212 ~~executive and submitted to the council with a motion for confirmation. The executive~~
213 ~~shall convene this group by July 1, 2014, and, with the help of King County criminal~~
214 ~~justice agencies, provide this group with data on the detainers received by the county,~~
215 ~~criminal history information on the individuals for whom detainers were honored, data on~~
216 ~~the length of stay within county detention facilities for these individuals, and the~~
217 ~~outcome of the court case that resulted in the individual being detained that led to them~~
218 ~~being subject to a detainer. The executive shall also try to obtain data on the outcome of~~
219 ~~the individuals' immigration proceedings after the honoring of the detainer. The~~
220 ~~oversight group shall review this data to evaluate the impact of the limitations on~~
221 ~~detainers and also to determine if any changes are needed in the county's policies and~~
222 ~~develop a report with the group's conclusions and recommendations. The executive shall~~
223 ~~also prepare a fiscal estimate of the cost of honoring federal detainers. The oversight~~
224 ~~group shall review this data to evaluate whether it continues to be appropriate for the~~
225 ~~county to honor any detainers or to cease honoring detainers as a county policy. The~~

226 ~~group shall also review the county's existing systems to make recommendations on how~~
227 ~~federal agents can use current information systems to identify when individuals will be~~
228 ~~released from county custody in order for federal agents to take appropriate enforcement~~
229 ~~actions upon release without the use of detainers or cost to the county. The group shall~~
230 ~~also review how the county could enhance its information systems to provide greater~~
231 ~~public notification of when individuals will be released from county custody.~~

232 ~~By January 31, 2015, the executive shall prepare a report summarizing the data~~
233 ~~reviewed by the oversight group, include the report of the oversight group, and include~~
234 ~~the group's proposed recommendations for proposed changes to the county's policies.~~
235 ~~The executive shall transmit the report, supporting data, and recommendations to the~~
236 ~~clerk of the council. The report called for in this section shall be transmitted in the form~~
237 ~~of a paper original and an electronic copy to the clerk of the council, who shall distribute~~

238 ~~electronic copies to all councilmembers and the lead staff for the committee of the whole~~
239 ~~and the law, justice, health and human services committee, or their successors.))~~
240

Ordinance 17886 was introduced on 7/14/2014 and passed by the Metropolitan King County Council on 9/2/2014, by the following vote:

Yes: 5 - Mr. Phillips, Mr. Gossett, Mr. McDermott, Mr. Dembowski
and Mr. Upthegrove
No: 3 - Mr. von Reichbauer, Ms. Lambert and Mr. Dunn
Excused: 1 - Ms. Hague

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



Larry Phillips, Chair

ATTEST:



Anne Noris, Clerk of the Council

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KING COUNTY COUNCIL

APPROVED this 5 day of SEPTEMBER 2014



Dow Constantine, County Executive

Attachments: None