



CITY OF KIRKLAND

City Attorney's Office
123 Fifth Avenue, Kirkland, WA 98033 425.587.3030
www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager
From: Kevin Raymond, City Attorney
Date: February 16, 2017
Subject: SUSTAINING A SAFE, INCLUSIVE AND WELCOMING CITY

RECOMMENDATION:

Council pass the attached ordinance adding a new chapter 3.18 to the Kirkland Municipal Code ("KMC") related to sustaining a safe, inclusive and welcoming city and generally prohibiting City of Kirkland ("City") officers and employees from inquiring into immigration status or collecting information regarding religious affiliation.

BACKGROUND DISCUSSION:

On January 3, 2017, the Mayor, on behalf of the City Council, proclaimed Kirkland a safe, inclusive and welcoming city for all people. The proclamation affirmed the City's commitment to protect and serve everyone who resides in, works in, or visits Kirkland without discrimination, as well its belief in the dignity, equality and constitutional and civil rights of all people. It further proclaimed that the City will not tolerate hate, intolerance, discrimination, harassment or any behavior that creates fear, isolation or intimidation. The Council considered additional steps and initiatives it may undertake to help keep Kirkland a welcoming and inclusive community at its special meeting and retreat on February 3, 2017.

The attached ordinance is grounded in the City's police power authority under Article 11, Section 11 of the Washington Constitution to enact legislation to protect the public health, safety and welfare, and it simply codifies long-standing City policies, including those of the Kirkland Police Department, generally prohibiting City officers and employees from inquiring into the immigration status of, or collecting information regarding religious affiliation from, individuals in Kirkland unless either required by law or provided voluntarily.

It is vitally important to the public health, safety and welfare of Kirkland that all individuals within the city feel safe interacting openly and honestly with City officers and employees, whether that be in connection with a law enforcement investigation, in response to a subpoena to testify at a trial in municipal court, or as part of the sharing of information related to an unsafe roadway condition that the City might not have been aware of.

The attached ordinance is also expressly intended to be consistent with applicable laws, specifically including 8 U.S.C. 1373, which prevents federal, state and local governments and officials from prohibiting or restricting any government entity or official from sending or

receiving information regarding the citizenship or immigration status of any individual either to or from federal immigration officers. Similar limitations are imposed by Section 1373 on prohibiting or restricting the ability to maintain or exchange such information between such entities and officials and federal immigration officers. Guidance from the Department of Justice confirms, however, that Section 1373 does not impose on states and localities the affirmative obligation to collect information from private individuals regarding their immigration status, nor does it require states and localities to take specific actions upon obtaining such information.

ORDINANCE O-4558

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO SUSTAINING A SAFE, INCLUSIVE AND WELCOMING CITY AND ADDING A NEW CHAPTER 3.18 TO THE KIRKLAND MUNICIPAL CODE.

1 WHEREAS, the City of Kirkland wishes sustain the city of Kirkland
2 as a welcoming community, including by fostering trust and cooperation
3 between City personnel and law enforcement officials and immigrant
4 communities to improve crime prevention and public safety; and
5

6 WHEREAS, the City of Kirkland wishes to promote the public
7 health and welfare of its residents and other users of its services.
8

9 NOW, THEREFORE, the City Council of the City of Kirkland do
10 ordain as follows:
11

12 Section 1. There is created a Chapter 3.18 of the Kirkland
13 Municipal Code entitled "Sustaining a Safe, Inclusive and Welcoming
14 City" to read as follows:
15

16 **3.18.010 Findings.**

17 (a) The City of Kirkland is a noncharter code city organized under
18 Chapter 35A RCW and Article 11, Section 10 of the Washington
19 Constitution. Under its police powers, the City may exercise any power
20 and perform any function, unless preempted by state or federal law,
21 relating to its government and affairs, including the power to regulate
22 for the protection and rights of its inhabitants. To this end, the City is
23 dedicated to providing all of its residents and other individuals in the
24 city of Kirkland with fair and equal access to services, opportunities and
25 legal protections.

26 (b) The enforcement of civil immigration laws has historically been
27 a federal government responsibility through the Immigration and
28 Naturalization Service. Since 2002, matters of immigration law have
29 been handled by the Office of Immigration and Customs Enforcement,
30 a branch of the Department of Homeland Security. Requiring local law
31 enforcement agencies, which are not specifically equipped or trained, to
32 enforce civil immigration laws would force local governments to expend
33 their limited resources to perform traditional federal functions.

34 (c) A goal of this ordinance is to foster trust and cooperation
35 between City personnel and law enforcement officials and immigrant
36 communities to improve crime prevention and public safety.

37 (d) A further goal of this ordinance is to promote the public health
38 and welfare of all city of Kirkland residents and other users of City
39 services, including but not limited to police and fire services.

40 (e) This chapter is intended to be consistent with federal laws
41 regarding communications between local jurisdictions and federal
42 immigration authorities, including but not limited to United States Code
43 Title 8, Section 1373.

44 **3.18.020 General Prohibition on Inquiring into Immigration**
 45 **Status.**

46 Except as provided in this section or when otherwise required by law, a
 47 City office, department, employee, agency or agent shall not condition
 48 the provision of City services on the citizenship or immigration status of
 49 any individual.

50 (1) Nothing in the chapter shall be construed to prohibit any City
 51 officer or employee from participating in cross-designation or task force
 52 activities with federal law enforcement authorities.

53 (2) City personnel shall not request specific documents relating to a
 54 person's civil immigration status for the sole purpose of determining
 55 whether the individual has violated federal civil immigration laws. Such
 56 documents include but are not limited to: passports; alien registration
 57 cards; or work permits.

58 (3) City personnel may use documents relating to a person's civil
 59 immigration status if the documents are offered voluntarily by the
 60 person in response to a general request.

61 (4) City personnel shall not initiate any inquiry or enforcement action
 62 based solely on a person's:

- 63 (A) civil immigration status;
- 64 (B) race;
- 65 (C) inability to speak English; or
- 66 (D) inability to understand City personnel or its officers.

67 (5) Except to the extent otherwise required by law, where the City
 68 accepts presentation of a state-issued driver's license or identification
 69 card as adequate evidence of identity, presentation of a photo identity
 70 document issued by the person's nation of origin, such as a driver's
 71 license, passport or matricula consular, shall be accepted and shall not
 72 subject the person to a higher level of scrutiny or different treatment
 73 than if the person had provided a Washington state driver's license or
 74 identification card. However, a request for translation of such a
 75 document to English shall not be deemed a violation of any provision of
 76 this subsection. This subsection does not apply to documentation
 77 required to complete a federal 1-9 employment eligibility verification
 78 form.

79 (6) This section does not create or form the basis for liability on the
 80 part of the City, its officers, employees or agents.

81 (7) Unless permitted by this chapter or otherwise required by state
 82 or federal law or international treaty, all applications, questionnaires and
 83 interview forms used in relation to the provision of City benefits,
 84 opportunities or services shall be promptly reviewed by relevant City
 85 personnel, and any question requiring disclosure of information related
 86 to citizenship or immigration status shall be, in such City personnel's
 87 best judgment, either deleted in its entirety or revised such that the
 88 disclosure is no longer required.

89
 90 **3.18.030 General Prohibition on Collecting Information**
 91 **Regarding Religious Affiliation.**

92 (a) Except to the extent otherwise required by law, no City officer
 93 or employee, including any agent or contracted agent, may either collect
 94 information or establish or otherwise utilize a registry, database or other
 95 compilation classifying persons on the basis of their religious affiliation
 96 or conduct any study related to the collection of such information or the

97 establishment or utilization of such a registry, database, or other
98 compilation.

99 (b) Nothing in this section may be construed as prohibiting the
100 collection of information that is voluntarily or anonymously provided,
101 including relating to the decennial census.

102
103 Section 2. If any provision of this ordinance or its application to
104 any person or circumstance is held invalid, the remainder of the
105 ordinance or the application of the provision to other persons or
106 circumstances is not affected.

107
108 Section 3. This ordinance shall be in force and effect five days
109 from and after its passage by the Kirkland City Council and publication
110 pursuant to Section 1.08.017, Kirkland Municipal Code in the summary
111 form attached to the original of this ordinance and by this reference
112 approved by the City Council.

113
114 Passed by majority vote of the Kirkland City Council in open
115 meeting this ____ day of _____, 2017.

116
117 Signed in authentication thereof this ____ day of
118 _____, 2017.

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney

PUBLICATION SUMMARY
OF ORDINANCE O-4558

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO SUSTAINING A SAFE, INCLUSIVE AND WELCOMING CITY AND ADDING A NEW CHAPTER 3.18 TO THE KIRKLAND MUNICIPAL CODE.

SECTION 1. Creates a new Chapter 3.86 of the Kirkland Municipal Code entitled "Sustaining a Safe, Inclusive and Welcoming City."

SECTION 2. Provides a severability clause for the ordinance.

SECTION 3. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the _____ day of _____, 2017.

I certify that the foregoing is a summary of Ordinance _____ approved by the Kirkland City Council for summary publication.

City Clerk