CITY OF KIRKLAND
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MEMORANDUM

To: Kurt Triplett, City Manager

From: Lorrie McKay, Intergovernmental Relations Manager

Date: September 24, 2014

Subject: RESOLUTION SUPPORTING INITIATIVE 594 ON THE NOVEMBER 2014 BALLOT.

RECOMMENDATION:
City Council holds a public hearing and considers the attached Resolution R-5074 expressing support for Initiative 594, which will be on the November 4, 2014 general election ballot.

BACKGROUND:
If approved by voters, the measure would extend criminal and public safety background checks to all gun sales or transfers in Washington State, except those exempted by state or federal law. Background checks would not be required for gifts between immediate family members or for antiques. The full text (19 pages) of Initiative 594 is included as Attachment A.

The certified ballot title reads as follows:

> This measure would apply currently used criminal and public safety background checks by licensed dealers to all firearm sales and transfers, including gun show and online sales, with specific exceptions.
>
> Should this measure be enacted into law? Yes [ ] No [ ]

As of September 23, the cities of Bainbridge Island, Mercer Island and Tacoma have each passed resolutions in support of Initiative 594.

Resolution Supporting Initiative 594:
At its September 16, 2014 meeting, the City Council requested staff draft a resolution in support of Initiative 594 for hearing and consideration.

COUNCIL ACTION:
Under RCW 42.17A.555, the Council may vote on a resolution to support or oppose a ballot proposition "so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of any opposing view;…"

Following tonight's public hearing, Council may:

1. Approve or Reject resolution R-5074;
2. Modify the resolution;
3. Ask staff to provide additional information for action at a later date;
4. Take no action on the resolution.

Attachments: A. Full text of Initiative 594
Resolution in support of Initiative 594

Initiative Measure No. 594 filed June 17, 2013

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: I-2745.1/13

ATTY/TYPIST: AI:eab

BRIEF DESCRIPTION:

Initiative Measure No. 594 filed June 17, 2013

AN ACT Relating to requiring criminal and public safety background checks for gun sales and transfers; amending RCW 9.41.010, 9.41.090, 9.41.122, 9.41.124, and 82.12.040; adding new sections to chapter 9.41 RCW; adding a new section to chapter 82.08 RCW; creating a new section; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** There is broad consensus that felons, persons convicted of domestic violence crimes, and persons dangerously mentally ill as determined by a court should not be eligible to possess guns for public safety reasons. Criminal and public safety background checks are an effective and easy mechanism to ensure that guns are not purchased by or transferred to those who are prohibited from possessing them. Criminal and public safety background checks also reduce illegal gun trafficking. Because Washington's current background check requirements apply only to sales or transfers by licensed firearms dealers, many guns are sold or transferred without a

criminal and public safety background check, allowing criminals and dangerously mentally ill individuals to gain access to guns.

Conducting criminal and public safety background checks will help ensure that all persons buying guns are legally eligible to do so. The people find that it is in the public interest to strengthen our background check system by extending the requirement for a background check to apply to all gun sales and transfers in the state, except as permitted herein. To encourage compliance with background check requirements, the sales tax imposed by RCW 82.08.020 would not apply to the sale or transfer of any firearms between two unlicensed persons if the unlicensed persons have complied with all background check requirements.

This measure would extend criminal and public safety background checks to all gun sales or transfers. Background checks would not be required for gifts between immediate family members or for antiques.

Sec. 2. RCW 9.41.010 and 2013 c 183 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Antique firearm" means a firearm or replica of a firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898, including any matchlock, flintlock, percussion cap, or similar type of ignition system and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(2) "Barrel length" means the distance from the bolt face of a closed action down the length of the axis of the bore to the crown of the muzzle, or in the case of a barrel with attachments to the end of any legal device permanently attached to the end of the muzzle.

(3) "Crime of violence" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an

attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, kidnapping in the second degree, arson in the second degree, assault in the second degree, assault of a child in the second degree, extortion in the first degree, burglary in the second degree, residential burglary, and robbery in the second degree;

(b) Any conviction for a felony offense in effect at any time prior to June 6, 1996, which is comparable to a felony classified as a crime of violence in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense comparable to a felony classified as a crime of violence under (a) or (b) of this subsection.

(4) "Dealer" means a person engaged in the business of selling firearms at wholesale or retail who has, or is required to have, a federal firearms license under 18 U.S.C. Sec. 923(a). A person who does not have, and is not required to have, a federal firearms license under 18 U.S.C. Sec. 923(a), is not a dealer if that person makes only occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or sells all or part of his or her personal collection of firearms.

(5) "Family or household member" means "family" or "household member" as used in RCW 10.99.020.

(6) "Felony" means any felony offense under the laws of this state or any federal or out-of-state offense comparable to a felony offense under the laws of this state.

(7) "Felony firearm offender" means a person who has previously been convicted or found not guilty by reason of insanity in this state of any felony firearm offense. A person is not a felony firearm offender under this chapter if any and all qualifying offenses have been the subject of an expungement, pardon, annulment, certificate, or rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(8) "Felony firearm offense" means:

(a) Any felony offense that is a violation of this chapter ((~~9.41 RCW~~));

(b) A violation of RCW 9A.36.045;

(c) A violation of RCW 9A.56.300;

(d) A violation of RCW 9A.56.310;

(e) Any felony offense if the offender was armed with a firearm in the commission of the offense.

(9) "Firearm" means a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder.

(10) "Gun" has the same meaning as firearm.

(11) "Law enforcement officer" includes a general authority Washington peace officer as defined in RCW 10.93.020, or a specially commissioned Washington peace officer as defined in RCW 10.93.020. "Law enforcement officer" also includes a limited authority Washington peace officer as defined in RCW 10.93.020 if such officer is duly authorized by his or her employer to carry a concealed pistol.

((~~(11)~~)) (12) "Lawful permanent resident" has the same meaning afforded a person "lawfully admitted for permanent residence" in 8 U.S.C. Sec. 1101(a)(20).

((~~(12)~~)) (13) "Licensed dealer" means a person who is federally licensed under 18 U.S.C. Sec. 923(a).

(14) "Loaded" means:

(a) There is a cartridge in the chamber of the firearm;

(b) Cartridges are in a clip that is locked in place in the firearm;

(c) There is a cartridge in the cylinder of the firearm, if the firearm is a revolver;

(d) There is a cartridge in the tube or magazine that is inserted in the action; or

(e) There is a ball in the barrel and the firearm is capped or primed if the firearm is a muzzle loader.

((~~(13)~~)) (15) "Machine gun" means any firearm known as a machine gun, mechanical rifle, submachine gun, or any other mechanism or instrument not requiring that the trigger be pressed for each shot and

having a reservoir clip, disc, drum, belt, or other separable mechanical device for storing, carrying, or supplying ammunition which can be loaded into the firearm, mechanism, or instrument, and fired therefrom at the rate of five or more shots per second.

((~~(14)~~)) (16) "Nonimmigrant alien" means a person defined as such in 8 U.S.C. Sec. 1101(a)(15).

((~~(15)~~)) (17) "Person" means any individual, corporation, company, association, firm, partnership, club, organization, society, joint stock company, or other legal entity.

(18) "Pistol" means any firearm with a barrel less than sixteen inches in length, or is designed to be held and fired by the use of a single hand.

((~~(16)~~)) (19) "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned, made or remade, and intended to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

((~~(17)~~)) (20) "Sale" and "sell" ((~~refers to~~)) mean the actual approval of the delivery of a firearm in consideration of payment or promise of payment ((~~of a certain price in money~~)).

((~~(18)~~)) (21) "Serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies, as now existing or hereafter amended:

(a) Any crime of violence;

(b) Any felony violation of the uniform controlled substances act, chapter 69.50 RCW, that is classified as a class B felony or that has a maximum term of imprisonment of at least ten years;

(c) Child molestation in the second degree;

(d) Incest when committed against a child under age fourteen;

(e) Indecent liberties;

(f) Leading organized crime;

(g) Promoting prostitution in the first degree;

(h) Rape in the third degree;

(i) Drive-by shooting;

(j) Sexual exploitation;

(k) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

(l) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(m) Any other class B felony offense with a finding of sexual motivation, as "sexual motivation" is defined under RCW 9.94A.030;

(n) Any other felony with a deadly weapon verdict under RCW 9.94A.825; ((~~or~~))

(o) Any felony offense in effect at any time prior to June 6, 1996, that is comparable to a serious offense, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious offense; or

(p) Any felony conviction under section 9 of this act.

((~~(19)~~)) (22) "Short-barreled rifle" means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle by any means of modification if such modified weapon has an overall length of less than twenty-six inches.

((~~(20)~~)) (23) "Short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun by any means of modification if such modified weapon has an overall length of less than twenty-six inches.

((~~(21)~~)) (24) "Shotgun" means a weapon with one or more barrels, designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned, made or remade, and intended to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(25) "Transfer" means the intended delivery of a firearm to another person without consideration of payment or promise of payment including, but not limited to, gifts and loans.

(26) "Unlicensed person" means any person who is not a licensed dealer under this chapter.

NEW SECTION. **Sec. 3.** A new section is added to chapter 9.41 RCW to read as follows:

(1) All firearm sales or transfers, in whole or part in this state including without limitation a sale or transfer where either the purchaser or seller or transferee or transferor is in Washington, shall be subject to background checks unless specifically exempted by state or federal law. The background check requirement applies to all sales or transfers including, but not limited to, sales and transfers through a licensed dealer, at gun shows, online, and between unlicensed persons.

(2) No person shall sell or transfer a firearm unless:

(a) The person is a licensed dealer;

(b) The purchaser or transferee is a licensed dealer; or

(c) The requirements of subsection (3) of this section are met.

(3) Where neither party to a prospective firearms transaction is a licensed dealer, the parties to the transaction shall complete the sale or transfer through a licensed dealer as follows:

(a) The seller or transferor shall deliver the firearm to a licensed dealer to process the sale or transfer as if it is selling or transferring the firearm from its inventory to the purchaser or transferee, except that the unlicensed seller or transferor may remove the firearm from the business premises of the licensed dealer while the background check is being conducted. If the seller or transferor removes the firearm from the business premises of the licensed dealer while the background check is being conducted, the purchaser or transferee and the seller or transferor shall return to the business premises of the licensed dealer and the seller or transferor shall again deliver the firearm to the licensed dealer prior to completing the sale or transfer.

(b) Except as provided in (a) of this subsection, the licensed dealer shall comply with all requirements of federal and state law that would apply if the licensed dealer were selling or transferring

the firearm from its inventory to the purchaser or transferee, including but not limited to conducting a background check on the prospective purchaser or transferee in accordance with federal and state law requirements and fulfilling all federal and state recordkeeping requirements.

(c) The purchaser or transferee must complete, sign, and submit all federal, state, and local forms necessary to process the required background check to the licensed dealer conducting the background check.

(d) If the results of the background check indicate that the purchaser or transferee is ineligible to possess a firearm, then the licensed dealer shall return the firearm to the seller or transferor.

(e) The licensed dealer may charge a fee that reflects the fair market value of the administrative costs and efforts incurred by the licensed dealer for facilitating the sale or transfer of the firearm.

(4) This section does not apply to:

(a) A transfer between immediate family members, which for this subsection shall be limited to spouses, domestic partners, parents, children, siblings, grandparents, grandchildren, nieces, nephews, first cousins, aunts, and uncles, that is a bona fide gift;

(b) The sale or transfer of an antique firearm;

(c) A temporary transfer of possession of a firearm if such transfer is necessary to prevent imminent death or great bodily harm to the person to whom the firearm is transferred if:

(i) The temporary transfer only lasts as long as immediately necessary to prevent such imminent death or great bodily harm; and

(ii) The person to whom the firearm is transferred is not prohibited from possessing firearms under state or federal law;

(d) Any law enforcement or corrections agency and, to the extent the person is acting within the course and scope of his or her employment or official duties, any law enforcement or corrections officer, United States marshal, member of the armed forces of the United States or the national guard, or federal official;

(e) A federally licensed gunsmith who receives a firearm solely for the purposes of service or repair, or the return of the firearm to its owner by the federally licensed gunsmith;

(f) The temporary transfer of a firearm (i) between spouses or domestic partners; (ii) if the temporary transfer occurs, and the firearm is kept at all times, at an established shooting range authorized by the governing body of the jurisdiction in which such range is located; (iii) if the temporary transfer occurs and the transferee's possession of the firearm is exclusively at a lawful organized competition involving the use of a firearm, or while participating in or practicing for a performance by an organized group that uses firearms as a part of the performance; (iv) to a person who is under eighteen years of age for lawful hunting, sporting, or educational purposes while under the direct supervision and control of a responsible adult who is not prohibited from possessing firearms; or (v) while hunting if the hunting is legal in all places where the person to whom the firearm is transferred possesses the firearm and the person to whom the firearm is transferred has completed all training and holds all licenses or permits required for such hunting, provided that any temporary transfer allowed by this subsection is permitted only if the person to whom the firearm is transferred is not prohibited from possessing firearms under state or federal law; or

(g) A person who (i) acquired a firearm other than a pistol by operation of law upon the death of the former owner of the firearm or (ii) acquired a pistol by operation of law upon the death of the former owner of the pistol within the preceding sixty days. At the end of the sixty-day period, the person must either have lawfully transferred the pistol or must have contacted the department of licensing to notify the department that he or she has possession of the pistol and intends to retain possession of the pistol, in compliance with all federal and state laws.

NEW SECTION. **Sec. 4.** A new section is added to chapter 9.41 RCW to read as follows:

Except as otherwise provided in this chapter, a licensed dealer may not deliver any firearm to a purchaser or transferee until the earlier of:

(1) The results of all required background checks are known and the purchaser or transferee is not prohibited from owning or possessing a firearm under federal or state law; or

(2) Ten business days have elapsed from the date the licensed dealer requested the background check. However, for sales and transfers of pistols if the purchaser or transferee does not have a valid permanent Washington driver's license or state identification card or has not been a resident of the state for the previous consecutive ninety days, then the time period in this subsection shall be extended from ten business days to sixty days.

Sec. 5. RCW 9.41.090 and 1996 c 295 s 8 are each amended to read as follows:

(1) In addition to the other requirements of this chapter, no dealer may deliver a pistol to the purchaser thereof until:

(a) The purchaser produces a valid concealed pistol license and the dealer has recorded the purchaser's name, license number, and issuing agency, such record to be made in triplicate and processed as provided in subsection (5) of this section. For purposes of this subsection (1)(a), a "valid concealed pistol license" does not include a temporary emergency license, and does not include any license issued before July 1, 1996, unless the issuing agency conducted a records search for disqualifying crimes under RCW 9.41.070 at the time of issuance;

(b) The dealer is notified in writing by the chief of police or the sheriff of the jurisdiction in which the purchaser resides that the purchaser is eligible to possess a pistol under RCW 9.41.040 and that the application to purchase is approved by the chief of police or sheriff; or

(c) The requirements or time periods in section 4 of this act have been satisfied((~~Five business days, meaning days on which state offices are open, have elapsed from the time of receipt of the~~

~~application for the purchase thereof as provided herein by the chief of police or sheriff designated in subsection (5) of this section, and, when delivered, the pistol shall be securely wrapped and shall be unloaded. However, if the purchaser does not have a valid permanent Washington driver's license or state identification card or has not been a resident of the state for the previous consecutive ninety days, the waiting period under this subsection (1)(c) shall be up to sixty days~~)).

(2)(a) Except as provided in (b) of this subsection, in determining whether the purchaser meets the requirements of RCW 9.41.040, the chief of police or sheriff, or the designee of either, shall check with the national crime information center, the Washington state patrol electronic database, the department of social and health services electronic database, and with other agencies or resources as appropriate, to determine whether the applicant is ineligible under RCW 9.41.040 to possess a firearm.

(b) Once the system is established, a dealer shall use the state system and national instant criminal background check system, provided for by the Brady Handgun Violence Prevention Act (18 U.S.C. Sec. 921 et seq.), to make criminal background checks of applicants to purchase firearms. However, a chief of police or sheriff, or a designee of either, shall continue to check the department of social and health services' electronic database and with other agencies or resources as appropriate, to determine whether applicants are ineligible under RCW 9.41.040 to possess a firearm.

(3) In any case under ((~~subsection (1)(c) of~~)) this section where the applicant has an outstanding warrant for his or her arrest from any court of competent jurisdiction for a felony or misdemeanor, the dealer shall hold the delivery of the pistol until the warrant for arrest is served and satisfied by appropriate court appearance. The local jurisdiction for purposes of the sale shall confirm the existence of outstanding warrants within seventy-two hours after notification of the application to purchase a pistol is received. The local jurisdiction shall also immediately confirm the satisfaction of the warrant on request of the dealer so that the hold may be released

if the warrant was for an offense other than an offense making a person ineligible under RCW 9.41.040 to possess a pistol.

(4) In any case where the chief or sheriff of the local jurisdiction has reasonable grounds based on the following circumstances: (a) Open criminal charges, (b) pending criminal proceedings, (c) pending commitment proceedings, (d) an outstanding warrant for an offense making a person ineligible under RCW 9.41.040 to possess a pistol, or (e) an arrest for an offense making a person ineligible under RCW 9.41.040 to possess a pistol, if the records of disposition have not yet been reported or entered sufficiently to determine eligibility to purchase a pistol, the local jurisdiction may hold the sale and delivery of the pistol ((~~beyond five days~~)) up to thirty days in order to confirm existing records in this state or elsewhere. After thirty days, the hold will be lifted unless an extension of the thirty days is approved by a local district court or municipal court for good cause shown. A dealer shall be notified of each hold placed on the sale by local law enforcement and of any application to the court for additional hold period to confirm records or confirm the identity of the applicant.

(5) At the time of applying for the purchase of a pistol, the purchaser shall sign in triplicate and deliver to the dealer an application containing his or her full name, residential address, date and place of birth, race, and gender; the date and hour of the application; the applicant's driver's license number or state identification card number; a description of the pistol including the make, model, caliber and manufacturer's number if available at the time of applying for the purchase of a pistol. If the manufacturer's number is not available, the application may be processed, but delivery of the pistol to the purchaser may not occur unless the manufacturer's number is recorded on the application by the dealer and transmitted to the chief of police of the municipality or the sheriff of the county in which the purchaser resides; and a statement that the purchaser is eligible to possess a pistol under RCW 9.41.040.

The application shall contain a warning substantially as follows:

CAUTION: Although state and local laws do not differ, federal law and state law on the possession of firearms differ. If you are prohibited by federal law from possessing a firearm, you may be prosecuted in federal court. State permission to purchase a firearm is not a defense to a federal prosecution.

The purchaser shall be given a copy of the department of fish and wildlife pamphlet on the legal limits of the use of firearms, firearms safety, and the fact that local laws and ordinances on firearms are preempted by state law and must be consistent with state law.

The dealer shall, by the end of the business day, sign and attach his or her address and deliver a copy of the application and such other documentation as required under subsection (1) of this section to the chief of police of the municipality or the sheriff of the county of which the purchaser is a resident. The triplicate shall be retained by the dealer for six years. The dealer shall deliver the pistol to the purchaser following the period of time specified in this ((~~section~~)) chapter unless the dealer is notified of an investigative hold under subsection (4) of this section in writing by the chief of police of the municipality or the sheriff of the county, whichever is applicable, denying the purchaser's application to purchase and the grounds thereof. The application shall not be denied unless the purchaser is not eligible to possess a pistol under RCW 9.41.040 or 9.41.045, or federal law.

The chief of police of the municipality or the sheriff of the county shall retain or destroy applications to purchase a pistol in accordance with the requirements of 18 U.S.C. Sec. 922.

(6) A person who knowingly makes a false statement regarding identity or eligibility requirements on the application to purchase a pistol is guilty of false swearing under RCW 9A.72.040.

(7) This section does not apply to sales to licensed dealers for resale or to the sale of antique firearms.

Sec. 6. RCW 9.41.122 and 1970 ex.s. c 74 s 1 are each amended to read as follows:

Residents of Washington may purchase rifles and shotguns in a state other than Washington: PROVIDED, That such residents conform to the applicable provisions of the federal Gun Control Act of 1968, Title IV, Pub. L. 90-351 as administered by the United States secretary of the treasury: AND PROVIDED FURTHER, That such residents are eligible to purchase or possess such weapons in Washington and in the state in which such purchase is made: AND PROVIDED FURTHER, That when any part of the transaction takes place in Washington, including, but not limited to, internet sales, such residents are subject to the procedures and background checks required by this chapter.

Sec. 7. RCW 9.41.124 and 1970 ex.s. c 74 s 2 are each amended to read as follows:

Residents of a state other than Washington may purchase rifles and shotguns in Washington: PROVIDED, That such residents conform to the applicable provisions of the federal Gun Control Act of 1968, Title IV, Pub. L. 90-351 as administered by the United States secretary of the treasury: AND PROVIDED FURTHER, That such residents are eligible to purchase or possess such weapons in Washington and in the state in which such persons reside: AND PROVIDED FURTHER, That such residents are subject to the procedures and background checks required by this chapter.

NEW SECTION. **Sec. 8.** A new section is added to chapter 9.41 RCW to read as follows:

The department of licensing shall have the authority to adopt rules for the implementation of this chapter as amended. In addition, the department of licensing shall report any violation of this chapter by a licensed dealer to the bureau of alcohol, tobacco, firearms and explosives within the United States department of justice and shall have the authority, after notice and a hearing, to revoke the license of any licensed dealer found to be in violation of this chapter.

NEW SECTION. **Sec. 9.** A new section is added to chapter 9.41 RCW to read as follows:

Notwithstanding the penalty provisions in this chapter, any person knowingly violating section 3 of this act is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW. If a person previously has been found guilty under this section, then the person is guilty of a class C felony punishable under chapter 9A.20 RCW for each subsequent knowing violation of section 3 of this act. A person is guilty of a separate offense for each and every gun sold or transferred without complying with the background check requirements of section 3 of this act. It is an affirmative defense to any prosecution brought under this section that the sale or transfer satisfied one of the exceptions in section 3(4) of this act.

NEW SECTION. **Sec. 10.** A new section is added to chapter 82.08 RCW to read as follows:

The tax imposed by RCW 82.08.020 does not apply to the sale or transfer of any firearms between two unlicensed persons if the unlicensed persons have complied with all background check requirements of chapter 9.41 RCW.

Sec. 11. RCW 82.12.040 and 2011 1st sp.s. c 20 s 103 are each amended to read as follows:

(1) Every person who maintains in this state a place of business or a stock of goods, or engages in business activities within this state, shall obtain from the department a certificate of registration, and shall, at the time of making sales of tangible personal property, digital goods, digital codes, digital automated services, extended warranties, or sales of any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), or making transfers of either possession or title, or both, of tangible personal property for use in this state, collect from the purchasers or transferees the tax imposed under this chapter. The tax to be collected under this section must be in an amount equal to the purchase price multiplied by the rate in effect for the retail sales tax under RCW 82.08.020. For

the purposes of this chapter, the phrase "maintains in this state a place of business" shall include the solicitation of sales and/or taking of orders by sales agents or traveling representatives. For the purposes of this chapter, "engages in business activity within this state" includes every activity which is sufficient under the Constitution of the United States for this state to require collection of tax under this chapter. The department must in rules specify activities which constitute engaging in business activity within this state, and must keep the rules current with future court interpretations of the Constitution of the United States.

(2) Every person who engages in this state in the business of acting as an independent selling agent for persons who do not hold a valid certificate of registration, and who receives compensation by reason of sales of tangible personal property, digital goods, digital codes, digital automated services, extended warranties, or sales of any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), of his or her principals for use in this state, must, at the time such sales are made, collect from the purchasers the tax imposed on the purchase price under this chapter, and for that purpose is deemed a retailer as defined in this chapter.

(3) The tax required to be collected by this chapter is deemed to be held in trust by the retailer until paid to the department, and any retailer who appropriates or converts the tax collected to the retailer's own use or to any use other than the payment of the tax provided herein to the extent that the money required to be collected is not available for payment on the due date as prescribed is guilty of a misdemeanor. In case any seller fails to collect the tax herein imposed or having collected the tax, fails to pay the same to the department in the manner prescribed, whether such failure is the result of the seller's own acts or the result of acts or conditions beyond the seller's control, the seller is nevertheless personally liable to the state for the amount of such tax, unless the seller has taken from the buyer a copy of a direct pay permit issued under RCW 82.32.087.

(4) Any retailer who refunds, remits, or rebates to a purchaser, or transferee, either directly or indirectly, and by whatever means, all or any part of the tax levied by this chapter is guilty of a misdemeanor.

(5) Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if:

(a) The person's activities in this state, whether conducted directly or through another person, are limited to:

(i) The storage, dissemination, or display of advertising;

(ii) The taking of orders; or

(iii) The processing of payments; and

(b) The activities are conducted electronically via a web site on a server or other computer equipment located in Washington that is not owned or operated by the person making sales into this state nor owned or operated by an affiliated person. "Affiliated persons" has the same meaning as provided in RCW 82.04.424.

(6) Subsection (5) of this section expires when: (a) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or (b) it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers.

(7) Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if the person would have been obligated to collect retail sales tax on the sale absent a specific exemption provided in chapter 82.08 RCW, and there is no corresponding use tax exemption in this chapter. Nothing in this subsection (7) may be construed as relieving purchasers from liability for reporting and remitting the tax due under this chapter directly to the department.

(8) Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if the state is prohibited under the Constitution or laws

of the United States from requiring the person to collect the tax imposed by this chapter.

(9) Notwithstanding subsections (1) through (4) of this section, any licensed dealer facilitating a firearm sale or transfer between two unlicensed persons by conducting background checks under chapter 9.41 RCW is not obligated to collect the tax imposed by this chapter.

NEW SECTION. **Sec. 12.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Council Meeting: 10/13/2014
Agenda: Public Hearings
Item #: 3. b.

RESOLUTION R-5074

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND EXPRESSING CITY COUNCIL SUPPORT FOR INITIATIVE MEASURE NO. 594, CONCERNING BACKGROUND CHECKS FOR FIREARM SALES AND TRANSFERS.

WHEREAS, Initiative Measure No. 594 (I-594) will be presented to the voters of the State of Washington at the general election on November 4, 2014; and

WHEREAS, criminal and public safety background checks help ensure that guns are not purchased by or transferred to those who are prohibited from possessing them; and

WHEREAS, conducting criminal and public safety background checks will help ensure that all persons acquiring guns are legally eligible to do so; and

WHEREAS, I-594 will strengthen the State background check system by extending the requirement for a background check to apply to all gun sales and transfers in the state, except as permitted; and

WHEREAS, as provided in RCW 42.17A.555, the City Council of the City of Kirkland desires to show its support of I-594.

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Council supports Initiative 594.

Section 2. The City Council urges Kirkland voters to vote yes on Initiative 594 on November 4, 2014.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2014.

Signed in authentication thereof this ____ day of _____, 2014.

_____
MAYOR

Attest:

_____
City Clerk