



Legislation Text

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CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to the Office of Immigrant and Refugee Affairs; amending Ordinance 125207, which adopted the 2017 Budget, changing appropriations for the Office of Immigrant and Refugee Affairs to provide \$1,000,000 from the General Subfund in 2017 with an automatic carry-forward to 2018, solely to provide legal representation, or to provide guidance and referral services for legal representation, to indigent Seattle residents and workers in immigration proceedings; and establishing standards for the provision of legal representation and guidance and referral services for legal representation; all by a 3/4 vote of the City Council.

WHEREAS, on January 25, 2017, by *Executive Order: Border Security and Immigration Enforcement*

Improvements, President Trump declared the policy of the executive branch to secure the southern border of the United States through the immediate construction of a physical wall; to detain individuals apprehended on suspicion of violating federal or state law, including federal immigration law, pending further proceedings regarding those violations; to expedite determinations of apprehended individuals' claims of eligibility to remain in the United States; to promptly remove individuals whose legal claims to remain in the United States are rejected; to cooperate fully with states and local law enforcement in enacting federal-state partnerships to enforce federal immigration priorities, as well as state monitoring and detention programs that are consistent with federal law and do not undermine federal immigration priorities; and to hire an additional 5,000 Border Patrol agents; and

WHEREAS, on January 25, 2017, by *Executive Order: Enhancing Public Safety in the Interior of the United States*, President Trump declared the policy of the executive branch to ensure faithful execution of United States immigration laws against all removable aliens consistent with Article II, Section 3 of the United States Constitution and 5 U.S.C. 3331; to make use of all available systems and resources to

ensure the efficient and faithful execution of the immigration laws of the United States; to ensure that jurisdictions that fail to comply with applicable federal law do not receive federal funds, except as mandated by law; to ensure that aliens ordered removed from the United States are promptly removed; to support victims of crimes committed by removable aliens; to hire an additional 10,000 immigration officers; to empower state and local law enforcement agencies to perform the functions of immigration officers; to provide the Secretary of Homeland Security with the authority to designate, in the Secretary's discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction; to ensure that jurisdictions that willfully refuse to comply with 8 U.S.C. 1373 are not eligible to receive federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary of Homeland Security; and

WHEREAS, these Executive Orders expand both the scope and speed of enforcement of immigration laws, namely by expanding enforcement priorities and possibly expanding expedited removal, thereby increasing the need for persons in immigration proceedings to have legal representation; and

WHEREAS, immigration law is a highly specialized area of law requiring expertise and knowledge of immigration law, immigration procedures, and immigration court processes; and

WHEREAS, there is no right to civil legal representation in immigration proceedings, which results in most individuals going through immigration proceedings without the advice and assistance of legal counsel; and

WHEREAS, the high cost of legal representation by private attorneys is compounded by the high U.S. Citizenship and Immigration Services form fees, and the availability of representation by non-profit organizations or pro-bono attorneys is far exceeded by the number of individuals needing assistance; and

WHEREAS, in *Access to Counsel in Immigration Court*, the first national study of access to counsel in U.S. immigration courts, published September 2016, the American Immigration Council found that between

2007 and 2012 only 65 percent of non-detained individuals at the immigration court in downtown Seattle were represented in court, and at the immigration court in Tacoma eight percent of detained individuals were represented in court; and

WHEREAS, the *Access to Counsel in Immigration Court* study also found that “detained immigrants with counsel, when compared to detained immigrants without counsel, were ten-and-a-half times more likely to succeed; released immigrants with counsel were five-and-a-half times more likely to succeed; and never detained immigrants with counsel were three-and-a-half times more likely to succeed”; and

WHEREAS, the King County Prosecuting Attorney, Dan Satterberg, stated in an opinion piece published by *The Seattle Times* on March 24, 2017, “We are not safer when victims of crime fear being deported if they call 911, talk to police, or come to the courthouse to get protection. We are not safer when a victim of abuse thinks she must choose between deportation or suffering more violence at the hands of her abuser. Unpunished violent crime threatens us all,” and further elaborated, “My alarm isn’t theoretical. Last year our office worked with 67 undocumented immigrants (more than 300 in the last five years) to prosecute crimes ranging from murder and rape to domestic violence. Without that cooperation and trust of undocumented immigrants, we wouldn’t have been able to get some dangerous offenders off the streets,” and

WHEREAS, the Center for American Progress published a report on January 26, 2017 titled, *The Effects of Sanctuary Policies on Crime and the Economy*, concluding that “[t]he data support arguments made by law enforcement executives that communities are safer when law enforcement agencies do not become entangled in federal immigration enforcement efforts. The data also make clear that, when counties protect all of their residents, they see significant economic gains,” based on analysis of Federal Bureau of Investigation, U.S. Census Bureau, and Centers for Disease Control and Prevention data; and

WHEREAS, United States District Court Judge James Robart, who was nominated to the federal court by President George W. Bush in 2004, was praised by United States Senator Orrin Hatch for his

“representation of the disadvantaged through his work with Evergreen Legal Services and the independent representation of Southeast Asian refugees” during confirmation of Judge Robart’s nomination, and about which Judge Robart stated in his Senate testimony, “I was introduced to people who in many times felt that the legal system was stacked against them or was unfair. And one of the things, I think, that my time there helped accomplish was to show them that the legal system was set up for their benefit and that it could be, if properly used, an opportunity for them to seek redress if they had been wronged”; and

WHEREAS, the cities of Los Angeles, San Francisco, New York, and Chicago have recognized the urgent need to provide legal assistance and have provided funding ranging from \$1.3 million to \$6.3 million to address this need; and

WHEREAS, in fiscal year 2016, the Seattle Immigration Court completed 2,979 cases, and the Tacoma Immigration Court completed 1,883 cases; and

WHEREAS, in fiscal year 2016, the Seattle Immigration Court had 7,229 pending cases and an average wait of 548 days, and the Tacoma Immigration Court had 1,208 pending cases and an average wait of 102 days; and

WHEREAS, the Northwest Detention Center in Tacoma currently has the capacity to detain 1,575 individuals, a portion of whom are Seattle residents and workers; and

WHEREAS, on January 30, 2017, the City passed Resolution 31730, reaffirming Seattle as a Welcoming City that promotes policies and programs to foster inclusion for all and reaffirming the City’s commitment to welcoming and supporting immigrants and refugees from all nationalities, religions, and backgrounds; and

WHEREAS, according to a February 2, 2017, Pew Research Center report, *20 Metro Areas Are Home to Six-in-Ten Unauthorized Immigrants in the U.S.*, Seattle is among the 20 U.S. metropolitan areas with the largest populations of undocumented/unauthorized immigrants; and

WHEREAS, more than 28,000 undocumented youth in Washington are the recipients of the Deferred Action for Childhood Arrivals (DACA) program; and

WHEREAS, nearly one in five Seattle residents is foreign born and 129 languages are spoken in the City's public schools; and

WHEREAS, the New American Economy (NAE) is a non-partisan coalition of over 500 government and business leaders who support immigration reforms that will help create jobs for Americans; and

WHEREAS, in February 2017 The City of Seattle's Office of Immigrant and Refugee Affairs (OIRA) joined with the NAE in their release of new research on the contributions of immigrants in the Seattle-Tacoma-Bellevue Metropolitan Area; and

WHEREAS, the NAE's data show that in 2014, immigrants in the Seattle-Tacoma-Bellevue Metropolitan Area contributed to the local, state and federal economy through payment of \$1.7 billion in state and local taxes and \$4.8 billion in federal taxes resulting in an estimated \$16.9 billion spending power potential;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Findings. The Fifth Amendment to the U.S. Constitution states: "No person shall ... be deprived of life, liberty, or property, without due process of law." The Fourteenth Amendment to the U.S. Constitution further provides that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The City finds that persons living or working in Seattle who are accused of immigration law violations and who are unable to afford legal counsel are unable to meaningfully exercise their rights to due process and equal protection. The City further finds that to ensure that indigent persons charged with violations of immigration laws are fully afforded their rights to due process and equal protection, under the Fifth and Fourteenth Amendments, it is necessary to provide them with access to legal counsel. The City further finds

that providing funds to enable indigent persons to obtain legal counsel for immigration related matters is a public function, providing necessary support of the poor and infirm.

Section 2. The Office of Immigrant and Refugee Affairs (OIRA) shall enter into one or more contracts, through a competitive process, with non-profit organizations to provide: a) legal representation in immigration matters, and/or b) guidance and referral services for legal representation, to indigent persons living or working in Seattle in need of civil legal representation for matters related to their immigration status. A non-profit organization may provide either the legal representation or guidance and referral services, or both.

a. A determination of indigent status shall be made for all persons seeking the appointment of counsel in immigration cases. The Director of the OIRA or the Director’s designee shall determine whether the person is indigent pursuant to the standards set forth in this Section. The Director or Director’s designee may contract with an individual or entity to make the determination of indigent status.

b. For purposes of this Section 2, the following definition applies:

“Indigent” means a person who, at any stage of an immigration proceeding, is unable to pay the anticipated cost of counsel for the matter regarding immigration status because the person’s available funds are insufficient for the retention of counsel.

Section 3. In order to pay for necessary costs and expenses incurred or to be incurred, but for which insufficient appropriations were made due to causes that could not reasonably have been foreseen at the time of making the 2017 Budget, the appropriation for the following item in the 2017 Budget is increased from the fund shown below:

Item	Fund	Department	Budget Control Level	Amount
1.1	General Subfund (00100)	Executive	Office of Immigrant and Refugee Affairs (OIRA) (00100-X1N00)	\$1,000,000
Total				\$1,000,000

Section 4. The appropriations provided in Section 3 of this ordinance shall be used only for legal representation, or to provide guidance and referral services for legal representation, to indigent Seattle residents and workers in

immigration proceedings and for no other purpose, as determined under Section 2 of this ordinance.

Section 5. The appropriations identified in Section 3 of this ordinance that are unexpended or unencumbered in 2017 shall not lapse until December 31, 2018.

Section 6. The OIRA is requested to report back to the City Council’s Gender Equity, Safe Communities and New Americans Committee with an interim report by June 30, 2018, and a final report by June 30, 2019, on the number of individuals, number of cases (specifying those in Seattle and those in Tacoma), types of cases, and case outcomes this funding for legal representation, and/or guidance and referral services for legal representation, to indigent Seattle residents and workers in immigration proceedings was used for.

Section 7. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by a 3/4 vote of all the members of the City Council the _____ day of _____, 2017, and signed by me in open session in authentication of its passage this _____ day of _____, 2017.

President _____ of the City Council

Approved by me this _____ day of _____, 2017.

Edward B. Murray, Mayor

Filed by me this _____ day of _____, 2017.

Monica Martinez Simmons, City Clerk

(Seal)