

Ordinance No. C35681

AN ORDINANCE relating to federal civil immigration enforcement in nonpublic areas of City of Spokane property; amending section 12.05.005; adopting new sections 12.05.050, 12.05.060, and 12.05.070 to chapter 12.05 of the Spokane Municipal Code; and declaring an emergency.

WHEREAS, the Fourth Amendment to the United States Constitution states The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized; and

WHEREAS, the Tenth Amendment to the United States Constitution provides that the powers that are not delegated expressly or by implication to the United States, or prohibited to the States, are reserved to the States, respectively, or to the people, and has been interpreted by the United States Supreme Court to preclude the Federal government from compelling or commandeering any State or local government, either directly or by the use of coercive threats to withhold federal funding, to adopt federal programs or enforce federal laws, including immigration laws; and

WHEREAS, 8 C.F.R. § 287.8(f)(2) states: “An immigration officer may not enter into the non-public areas of a business, a residence including the curtilage of such residence, or a farm or other outdoor agricultural operation, except as provided in section 287(a)(3) of the Act, for the purpose of questioning the occupants or employees concerning their right to be or remain in the United States unless the officer has either a warrant or the consent of the owner or other person in control of the site to be inspected. When consent to enter is given, the immigration officer must note on the officer's report that consent was given and, if possible, by whom consent was given. If the immigration officer is denied access to conduct a site inspection, a warrant may be obtained”; and

WHEREAS, the Washington State Office of the Attorney General’s Guidance Concerning Immigration Enforcement states: “Local governments and private organization should adopt a policy that addresses when federal immigration authorities will be permitted to access non-public areas”; and

WHEREAS, RCW 35.22.280 reads: “Any city of the first class shall have power to make all regulations necessary for the preservation of public morality, health, peace, and good order within its limits”; and

WHEREAS, Section 3 of the Spokane City Charter states: “the City shall have perpetual succession; shall have and exercise all powers, functions, rights, and

privileges now or hereafter given or granted to, and shall be subject to all the duties, obligations, liabilities, and limitations now or hereafter imposed upon, municipal corporations of the first class, by the constitution and laws of the State of Washington; and shall have and exercise all other powers, functions, rights and privileges usually exercised by, or which are incidental to, or inhere in, municipal corporations of like character and degree”; and

WHEREAS, Spokane’s Comprehensive Plan Capital Facilities and Utilities Chapter calls for Joint Use of Public Sites to encourage maximum flexibility, utility, and multiple-uses as cost-effective opportunities to single-use buildings and sites; and

WHEREAS, Spokane Municipal Code 18.01.020B states: “It is the intent of the City that all people have an equal opportunity to participate fully in the life of the City and that discriminatory barriers to equal participation in employment, housing, and public accommodations be removed. The City has a compelling interest in eradicating and preventing such discrimination and in ensuring equal opportunity in employment, housing, and public accommodations”; and

WHEREAS, Spokane Municipal Code 18.07.010 states “the Spokane Police Department, its officers, employees, and all officers commissioned under the Spokane Police Department are prohibited from engaging in profiling as defined as relying on “actual or perceived race, religion, national origin, color, creed, age, citizenship status, immigration status, refugee status, gender, sexual orientation, gender identity, disability, socio-economic status, housing status, or membership in any protected class under federal, state or local law as the determinative factor in initiating law enforcement action against an individual, rather than an individual’s behavior or other information or circumstances that links a person or persons to suspected unlawful activity”; and

WHEREAS, Spokane Municipal Code 18.07.020 states “Unless required by law or court order, no officer, agent, or employee of the City of Spokane shall inquire into the immigration or citizenship status of any person, or engage in activities designed to ascertain the immigration status of any person”; and

WHEREAS, Spokane Police Department Policy 428.1 states: “Officers shall not contact, question, delay, detain or arrest an individual because s/he is suspected of violating immigration laws. Officers should not attempt to determine the immigration status of crime victims and witnesses or take enforcement action against them due to that immigration status. Undocumented presence, in and of itself, is not a criminal violation”; and

WHEREAS, Spokane Police Department Policy 428.2 states: “*a request from Department of Homeland Security (DHS) does not provide legal basis to stop or detain an individual, or to prolong the detention of an individual. Officers must have an*

independent legal basis to stop or detain any individual. It is the policy of the [Spokane Police Department] that we do not ask about immigration status unless it is directly related to the crime being investigated”; and

WHEREAS, Spokane Police Department Policy 428.3.1 states: *“Unless immigration status is relevant to another criminal offense or investigation, the fact that an individual is suspected of being an undocumented alien shall not be the basis for contact, detention or arrest”;* and

WHEREAS, the City of Spokane strives to be a community of kindness, embracing all visitors no matter where they come from, how they worship, or who they love; and

WHEREAS, the City of Spokane believes that all residents and visitors are worth dignity, compassion, and respect; and

WHEREAS, this ordinance complies with the U.S. Department of Justice Office of Justice Programs local government certification requirements; and

WHEREAS, this ordinance is 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; and

WHEREAS, the current practice of immigration enforcement activities on City-owned property are jeopardizing the public peace, health, and safety of all people in the City of Spokane, regardless of race, ethnicity, or immigration status, because they are completely at odds with the City of Spokane’s policy, practices, and values, and this drastic disconnect presents an urgent and emergency condition which justifies the passage of this ordinance as an emergency ordinance pursuant to Section 19 of the Spokane City Charter.

NOW, THEREFORE, the City of Spokane does ordain:

Section 1. That section 12.05.005 of the Spokane Municipal Code is amended to read as follows:

Section 12.05.005 Definitions

- A. “Agent” means any person acting within the scope of employment by or acting on behalf of the City of Spokane including City-facility property managers.
- B. “Employee” means any person holding a regularly compensated position of employment with the City of Spokane including elected officers.

- C. “Federal civil immigration enforcement operations” means an operation than has one of its objectives the identification or apprehension of a person or persons in order to investigate them for a violation of the immigration law and subject them to one or more of the following:
1. Civil immigration detention;
 2. Removal proceedings; and
 3. Removal from the United States
- D. “LEED” is a green building rating and certification system developed by the U.S. Green Building Council to evaluate environmental performance from a whole building perspective, including sites, water efficiency, energy & atmosphere, materials & resources, indoor environmental quality, locations & linkages, awareness & education, innovation in design, and regional priority.
- E. “Nonpublic” means any area of a city facility or property that is not generally open and accessible to the general public, but instead requires express permission, such as a ticket for a bona fide passenger, by a city employee or an employee of a tenant in a city facility on an individual basis. Areas posted as “Restricted” in City facilities shall be considered to be non-public areas.
- F. “United States Citizenship and Immigration Services” means the agency of the United States Department of Homeland Security and any successor agency charged with overseeing United States immigration laws.
- G. “United States Customs and Border Protection” means the agency of the United States Department of Homeland Security and shall include any successor federal agency charged with border enforcement.
- H. “United States Immigration and Customs Enforcement” means the agency of the United States Department of Homeland Security including Enforcement and Removal Operations and Homeland Security Investigations and shall include any successor federal agency charged with the enforcement of immigration laws.
- I. “U.S. Green Building Council” is an organization serving as the nation’s foremost leaders from across the building industry working to promote buildings that are environmentally responsible, profitable, and healthy places to work and live.

Section 2. That there is adopted a new section 12.05.050 of the Spokane Municipal Code to read as follows:

Section 12.05.050 Federal Civil Immigration Enforcement Operations on City Property

- A. It is the intent of the City of Spokane to protect and ensure the Fourth Amendment rights afforded to all people under the United States Constitution and in accordance with all state and federal laws.
- B. For the purpose of executing federal civil immigration enforcement operations unless otherwise required by state or federal law, City of Spokane employees or agents of the City of Spokane, shall not permit United States Immigration and Customs Enforcement, United States Customs and Border Protection, United States Citizenship and Immigration Services officers, agents, representatives, or any other organization, agency, or individual access to nonpublic areas of City of Spokane owned or operated facilities, property, equipment, vehicles, nonpublic databases, or nonpublic portions of otherwise public databases absent a judicial criminal warrant specifying the information or persons sought.
- C. Permission to access any city facility, property, equipment, vehicles, or nonpublic database without a judicial criminal warrant for the purpose of executing federal civil immigration enforcement operations shall only be provided with the express, written approval of the Mayor.
- D. Any warrantless attempts or requests for access to City facilities, property, equipment or nonpublic databases for the purpose of executing federal civil immigration enforcement operations shall be immediately sent to the Mayor or the designee responsible for the operation of the facility, property, vehicle, database or equipment.

Section 3. That there is adopted a new section 12.05.060 of the Spokane Municipal Code to read as follows:

Section 12.05.060 Designating Non-Public Areas of City Properties

- A. The City Council may designate by resolution areas of City facilities to be non-public or restricted areas due to employee and resident safety concerns, inaccessibility, city asset security, and for purposes of complying with this chapter.
- B. Nothing in this section precludes the Director of Asset Management from designating areas of City facilities to be non-public or restricted areas without approval of the City Council.

Section 4. That there is adopted a new section 12.05.070 of the Spokane Municipal Code to read as follows:

Section 12.05.070 Severability

If any court of law determines that any particular provision of this chapter is void or of no legal effect, the offending provision(s) shall be deemed struck from this chapter and the remainder of the chapter shall continue unaffected.

Section 5. Pursuant to section 19 of the City Charter, this ordinance shall be effective immediately upon passage.

PASSED by the City Council on _____.

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor

Date

Effective Date