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Attachments:	

1 ..Title

2 AN ORDINANCE conditioning consent searches of
3 persons or property by law enforcement personnel; and
4 adding a new chapter to K.C.C. Title 2.

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6 STATEMENT OF FACTS:

7 1. Racism has deep and harmful impacts that unfairly disadvantage Black,
8 Indigenous and People of Color ("BIPOC") and unfairly advantage people
9 who are identified as white.

10 2. The King County board of health, in BOH Resolution 20-08, declared
11 "racism a public health crisis" and supported "King County and Public
12 Health - Seattle & King County immediately in the work to advance a
13 public health approach in addressing institutional and systemic racism."

14 3. According to the Bureau of Justice Statistics, being a driver in a traffic
15 stop is the most common interaction that the public has with police. The
16 Center for Policing Equity recently issued a report entitled The Science of
17 Justice: Seattle Police Department, showing that in Seattle, Black
18 individuals are stopped five times as often as white individuals.

19 4. The Center for Policing Equity report also found that BIPOC
20 individuals are significantly more likely to be searched than their white
21 counterparts. Most adults are not aware that they have the right to refuse

22 police requests to search, do not feel free to refuse police requests to
23 search, and frequently "interpret questions or suggestions as orders when
24 they come from a person of authority," according to Tracey Maclin, *The*
25 *Decline of the Right of Locomotion: The Fourth Amendment on the*
26 *Streets*, 75 CORNELL L. REV. 1258, 1301 (1990).

27 5. Justice Sonia Sotomayor described the arbitrary and discriminatory
28 nature of warrantless police stops. "Although many Americans have been
29 stopped for speeding or jaywalking, few may realize how degrading a stop
30 can be when the officer is looking for more," she wrote in the dissent in
31 *Utah v. Strieff*, 136 S. Ct. 2056, 2071 (2016). "The indignity of the stop is
32 not limited to an officer telling you that you look like a criminal," she
33 added. "The officer may next ask for your 'consent' to inspect your bag or
34 purse without telling you that you can decline. ... We must not pretend
35 that the countless people who are routinely targeted by police are
36 'isolated.' They are the canaries in the coal mine whose deaths, civil and
37 literal, warn us that no one can breathe in this atmosphere."

38 6. Article 1, Section 7 of the Washington Constitution and the Fourth
39 Amendment to the United States Constitution govern when an individual's
40 person or belongings may be searched by law enforcement. *Schneckloth*
41 *v. Bustamonte*, 412 U.S. 218, 219 (1973), states: "It is well settled under
42 the Fourth and Fourteenth Amendments that a search conducted without a
43 warrant issued upon probable cause is 'per se unreasonable ... subject only
44 to a few specifically established and well-delineated exceptions.'" One of

45 the exceptions to the requirements of both a warrant and probable cause is
46 a search to which an individual consents, according to *Davis v. United*
47 *States*, 328 U.S. 582, 593-594 (1947) and *Zap v. United States*, 328 U.S.
48 46 624 (1946).

49 7. If law enforcement asks for a person's consent, the government has the
50 burden of demonstrating the voluntariness of the consent, according to
51 *State v. Shoemaker*, 85 Wn.2d 207, 2710 (1975). To be valid, the consent
52 must be voluntary, and the search must not exceed the scope of consent,
53 according to *State v. Hastings*, 119 Wn.2d 229, 234 (1992). Whether
54 consent is freely given is a question of fact dependent upon the totality of
55 the circumstances, which includes: "(1) whether Miranda warnings had
56 been given prior to obtaining consent; (2) the degree of education and
57 intelligence of the consenting person; and (3) whether the consenting
58 person had been advised of his right to consent," according to *Shoemaker*,
59 57 85 Wn.2d at 211-12.

60 8. Law enforcement personnel are not required to inform an individual of
61 their rights to decline a consent search.

62 9. Scholars estimate that consent searches comprise more than ninety
63 percent of all warrantless searches by police, according to Dressler &
64 Thomas, *supra* note 2, at 317–18 (citing Richard Van Duizend et al., the
65 Search Warrant Process: Preconceptions, Perceptions, and Practices 21
66 (1984)); Ric Simmons, Not "Voluntary" but Still Reasonable: A New

67 Paradigm for Understanding the Consent Searches Doctrine, 80 IND. L.J.
68 773, 773 (2005).

69 10. "Many people, if not most, will always feel coerced by police
70 'requests' to search," according to Marcy Strauss, Reconstructing Consent,
71 92 J. CRIM. L.&CRIMINOLOGY 211, 221 (2001).

72 11. According to the Report of the Sentencing Project to the United
73 Nations Special Rapporteur on Contemporary Forms of Racism, Racial
74 Discrimination, Xenophobia, and Related Intolerance: Regarding Racial
75 Disparities in the United States Criminal Justice System, SENT'G
76 PROJECT 1, 6 (Mar. 2018), racial minorities are not only
77 disproportionately stopped and asked to submit to searches; they are also
78 disproportionately arrested, jailed awaiting trial, and convicted. They are
79 also more likely to be given long sentences.

80 12. Given how tied consent searches are to disproportionate stops of
81 people of color, consent search jurisprudence has been decried as "the
82 handmaiden of racial profiling," according to George C. Thomas III,
83 Terrorism, Race and a New Approach to Consent Searches, 73 MISS L.J.
84 525, 542 (2003).

85 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

86 SECTION 1. Findings: The council finds this ordinance necessary because,
87 until racist systems are dismantled, there are interim policy changes and process
88 improvements that can be implemented immediately to prevent or reduce inequitable
89 outcomes and ensure that individuals understand their constitutional rights. The council

90 further finds implementing a pilot program to increase awareness of an individual's rights
91 regarding a request from law enforcement to search an individual or their property is
92 expected to reduce inequitable outcomes and promote justice.

93 SECTION 2. Sections 3 through 5 of this ordinance should constitute a new
94 chapter in K.C.C. Title 2.

95 NEW SECTION. SECTION 3. The definitions in this section apply throughout
96 this chapter unless the context clearly requires otherwise.

97 A. "Individual" means any person who is age eighteen or older.

98 B. "Law enforcement personnel" means any King County sheriff's employee or
99 volunteer having as a primary function the enforcement of criminal laws in general,
100 including, but not limited to, commissioned sheriff deputies, and includes such
101 employees performing law enforcement services on behalf of a city under an interlocal
102 agreement. For the purposes of this subsection, "primary function" means that function
103 to which the greater allocation of resources is made.

104 NEW SECTION. SECTION 4.

105 A. Before law enforcement personnel may obtain consent from an individual to
106 search the individual or any property, abodes or vehicles under the control of the
107 individual, the individual shall:

108 1. Be informed by the law enforcement personnel that the individual has the right
109 to deny the request to search their person or any property, abodes, or vehicles under
110 control of the individual and may not be detained by the law enforcement personnel for
111 the purposes of the requested search; and

112 2. Except in situations in which the individual declines to consent to a search,

113 consult with legal counsel in person, by telephone or by video conference. The
114 consultation may not be waived and is required regardless of the individual's custody
115 status.

116 B. After an individual has consulted with legal counsel, the individual may
117 choose to either advise or direct the legal counsel to advise the law enforcement
118 personnel whether the individual chooses to assert a constitutional right. Except in the
119 circumstance when the individual chooses to advise the law enforcement personnel, any
120 statement by legal counsel regarding the assertion of the individual's constitutional rights
121 shall be treated by law enforcement personnel the same as if it came from the individual.

122 C. Law enforcement personnel shall prepare a written record for each instance
123 when an individual consults with legal counsel regarding consent to search. The record
124 shall document:

- 125 1. The time of the contact;
- 126 2. The individual's name, race, ethnicity, gender and age;
- 127 3. Whether the individual declined or agreed to the consent search;
- 128 4. What, if anything, was found during the search; and
- 129 5. Information relating to the law enforcement personnel including the name
130 and badge number of all law enforcement personnel present when a consent search has
131 been requested of the individual.

132 D. Sixty days after the effective date of this ordinance, the executive shall
133 transmit a copy of the statements which shall be used by law enforcement personnel to
134 inform individuals of their right to deny a request for search as required by subsection
135 A.1. of this section and a description of the training law enforcement personnel will

136 receive to implement subsection A.1. of this section to the to the director of the office of
137 law enforcement oversight, the prosecuting attorney, the director of the department of
138 public defense and the clerk of the council, who shall provide the electronic copy to all
139 councilmembers, the council chief of staff and the lead staff for the law and justice
140 committee or its successor.

141 E. Twice annually, the executive's s office shall transmit copies of the records
142 required by subsection C. of this section to the director of the office of law enforcement
143 oversight, the prosecuting attorney and the director of the department of public defense.
144 The executive and those offices and departments shall collaborate on the protocols that
145 the executive shall follow to transmit copies of the records. Twice annually, the
146 executive's office shall transmit copies of the records required by subsection C. of this
147 section electronically to the clerk of the council, who shall provide the electronic copy to
148 all councilmembers, the council chief of staff and the lead staff for the law and justice
149 committee or its successor. The executive office shall redact the name of the individual
150 and replace it with initials in the records transmitted under this section.

151 F. Nothing in this chapter is intended to require law enforcement personnel to
152 obtain consent if under the law consent is not required, including:

- 153 1. A search that is subject to a warrant;
- 154 2. When there is probable cause to believe that delay in obtaining a warrant
155 would result in the loss of evidence, escape of a suspect, or harm to law enforcement
156 personnel or other persons;
- 157 3. Frisking of an individual when law enforcement personnel has reasonable
158 suspicion that the individual has engaged or is about to engage in a criminal act and that a

159 reasonable safety concern exists;

160 4. The evidence is in plain view;

161 5. The search is incident to lawful arrest; and

162 6. The law enforcement personnel has a subjective belief that someone likely
163 needs assistance for health or safety concerns, including if the law enforcement personnel
164 perceives an imminent threat of substantial bodily injury to persons or substantial damage
165 to property.

166 NEW SECTION. SECTION 5. If legislation authorizing continuation of the pilot
167 program in this chapter beyond the pilot period is not enacted before the end of the pilot
168 period, then the executive shall assess whether to adopt the pilot program as an executive
169 policy or procedure.

170 SECTION 6. This ordinance expires January 1, 2025.

171 SECTION 7. If any provision of this ordinance or its application to any person or
172 circumstance is held invalid, the remainder of the ordinance or the application of the
173 provision to other persons or circumstances is not affected.