

## Comments To Enactment Of Senate Bill 5497 (The Act)

After reviewing Senate Bill 5497, recently signed by Governor Inslee as an emergency act that takes place immediately, and following discussion with Legal Department staff regarding the Act's mandates as they may apply to current practices of the City, we have reached the following preliminary conclusions that we felt you should be aware of.

The Act directs the State AG to develop model policies to address the Act's mandates. The policies must be developed over the next 12 months, so we will have time to watch this progress and evaluate potential impacts to the City's practices. The greatest effects the Act would appear to have for the City pertain to the City's ability to apply for and receive federal grant funds and to enter federal contracts that benefit the City, the latter primarily as they apply to cooperative law enforcement efforts.

With respect to City contracts potentially affected by the Act, the City will be assessing all federal grants and contracts that currently exist or that the City is preparing to apply for to determine whether the Act's requirements conflict with specific terms and obligations associated with the federal agreements that the City is obligated to comply with. The Act specifically addresses the intent that state and local agencies, in following the direction provided by the Act, shall maintain compliance with all state and federal laws and lawful court orders.

Some of the federal contracts the City currently is party to include, but are likely not limited to, the following areas:

- Airport FAA grant agreements

- Transit grant agreements

- Federal Highways grants for road development

- HUD funding grants

- Law Enforcement federal grants and cooperative agency contracts

We will be thoroughly reviewing these existing agreements as well as investigating any other federal commitments the City may have or be applying to receive to determine whether and to what degree the City's compliance with the federal requirements may be impacted.

The most direct effects the Act appears to involve pertain to law enforcement. To date the City has taken a number of steps, at Council's direction, to address many of the requirements imposed by the Act on law enforcement operations, by both the police officers and the City jail staff. We will continue to review procedures being used in both areas to ensure compliance with the Act's directives. We are aware that there are a couple of areas, particularly with respect to jail procedures, to ensure compliance with the Act. Those particular areas include:

- Federal interviews conducted with jail detainees within the jail premises. The City will need to create a consent form consistent with the Act's direction that will advise prospective interviewees of their right to refuse the interview if they do not consent to an interview taking place. The City will also need to begin advising inmates prior to requesting foreign national status for consular notification.

- We will also review the contracts we have with federal agencies associated with the violent crimes task force to ensure compliance with the terms of the Act. Because the primary focus of these cooperative arrangements is targeting violent offenders the

activities of the cooperative effort should not conflict with the direction of the Act, but insofar as immigration enforcement is one of the methods utilized in dealing with violent offenders more review of the specific actions taken by YPD officers involved will be carefully reviewed.

To recap, while investigation of compliance with the Act's direction is ongoing, it does not appear at this time that the City's operations significantly deviate from the requirements stated therein. Once the Model Rules have been prepared by the Attorney General we will have a better idea of more specific requirements the City may need to address. Those rules will be drafted within the next 12 months, allowing time for the City to prepare for any issues that they may raise with existing agreements and procedures.

It is important to be aware that throughout the Act there are numerous advisories that local agencies are to remain in compliance with both state and federal laws while responding to the direction given in the Act. Specifically, in paragraph 16 of Section 6, the Act states:

Nothing in this section prohibits the collection, use, or disclosure of information that is (a) required to comply with state or federal law; or (b) in response to a lawfully issued court order.

Section 8 provides that "[n]o section of this act is intended to limit or prohibit any state or local agency or officer from: (1) Sending to, or receiving from, federal immigration authorities the citizenship or immigration status of a person, or maintaining such information, or exchanging the citizenship or immigration status of an individual with any other federal, state, or local government agency, in accordance with 8 U.S.C. Sec. 1373; or (2) Complying with any other state or federal law."

Section 9 further provides that "[i]f any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state."

The latter section appears to be directed at the state's receipt of funds. This will have to be more thoroughly reviewed to determine if and how local agencies and governments may be included in this direction.

At this point, the City does need to more thoroughly review and, if necessary, address a couple of areas of potential concern regarding the law enforcement and jail issues described. We do not anticipate at this point there being any significant impacts of the Act on the present City operations but we shall continue to investigate the impact potentials and monitor the contracts, grants and agreements the City has with federal agencies to identify and address any issues that may become evident.