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January 30, 2020

Los Angeles City Council
c/o Office of the City Clerk
City Hall, Room 395
Los Angeles, California 90012

Attention: PLUM Committee

Dear Honorable Members:

**REPORT RELATIVE TO PROPOSED PRIVATE DETENTION CENTERS INTERIM CONTROL
ORDINANCE; CF 20-0065**

On January 22, 2020, the City Council adopted Motion CF 20-0065 (Martinez - Wesson - Rodriguez - Price) instructing the Department of City Planning (DCP), with the assistance of the City Attorney, to prepare an Interim Control Ordinance (ICO) to temporarily prohibit the issuance of any demolition, building, grading, and any other applicable permits to prevent the construction or operation of private detention centers, citywide, for the duration of 45 days, with the possibility of a 10 month and 15-day extension which can be further extended to an additional year. The Motion also included an Urgency Clause, making it effective upon publication.

Background

On October 11, 2019, Governor Newsom signed into law Assembly Bill 32 (Bonta). AB 32 bans private prisons and detention facilities from operating in California, and prevents the State from entering into or renewing contracts with for-profit prison companies after January 1, 2020, and will phase out such facilities by 2028. A previous state bill, Senate Bill 29 (Lara), signed into law on October 5, 2017, makes for-profit facilities that contract with a California city or local jurisdiction subject to the California Public Records Act and requires 180 days of public notice and at least two public hearings before a local city or county issues a permit to a for-profit detention company to build or expand.

AB 32 and SB 29 address the proliferation of private detention centers around the country which have become increasingly relied upon to detain immigrants. Due to the high rates of immigrants being held in detention facilities, the Federal government delegates some custody of immigrant adults and unaccompanied minors to the private sector. In some instances, the care of unaccompanied immigrant minors has also been outsourced to non-profit organizations.

Both public and private facilities alike are used for the purpose of detaining immigrants. There are two primary federal departments that carry out the enforcement of immigration law. The U.S. Immigration and Customs Enforcement (ICE) is a federal immigration law enforcement agency under the U.S. Department of Homeland Security. In Fiscal Year 2019, ICE reported that 1,148,024 individuals were apprehended and about 64.5% of these individuals formed part of a family unit or were with unaccompanied minors. The number of individuals in ICE custody on an average day reached 50,165.

The ICE nationwide network of detention facilities includes: 5 ICE-owned, contractor-operated Service Processing Centers; 8 privately owned and/or operated Contract Detention Facilities; 12 dedicated Intergovernmental Service Agreement (IGSA) facilities; and 200 shared-use IGSA facilities, typically arranged through contracts between private and public joint-use agreements.

Placement and custody of unaccompanied minors is delegated to the Office of Refugee Resettlement, a program of the Administration for Children and Families, an office within the United States Department of Health and Human Services. Defined by the Federal government, unaccompanied minors: have no lawful immigration status in the United States; are under 18 years of age; and have no parent or legal guardian in the United States or no parent or legal guardian in the United States available to provide care and physical custody.

Managed as the Unaccompanied Alien Minor (UAC) Program, early estimates of Fiscal Year 2019 indicate that 69,550 children were referred to the UAC Program. As of November 2019, an average of 4,054 children were under custody via the UAC Program though that number was as high as 13,432 in June 2019. While there is no data provided by the UAC Program as to the number of children detained in California, available data does show that 8,422 children were released to the custody of a sponsor in California.

The nationwide network of detention facilities with custody of unaccompanied minors is spread throughout the country, with no government database available to determine the exact number of facilities. However, attempts to identify such facilities throughout the country have rendered a partial picture of their proliferation. A mapping project by ProPublica, for example, identified close to 100 facilities, using publicly sourced data.

A multitude of studies and public testimony describe the alarming status of private detention center operations. A February 2019 report by the California Attorney General found that privately operated immigration detention centers in California operate under very poor living conditions. Common issues experienced by detainees across the 10 investigated facilities in California included: restrictions on freedom of movement; language barriers; inadequate access to medical and mental health care; very limited contact with family members or other support systems; and inadequate access to legal representation.

The California Attorney General found that conditions faced by immigrant detainees are unnecessarily severe in relation to detainees' backgrounds and the purpose of their confinement. While immigration is a civil and not a criminal matter, detention facilities are modeled using standards established by the American Correctional Association (ACA). As such, the standards for detention facilities for immigrants are likened to that of the standards for detention facilities for individuals who violate criminal law.

Further reports have studied the effects of detention on individuals. The American Academy of Pediatrics concluded that there is no evidence which indicates that any time in detention is safe for children. Studies have found that detained children experience high rates of posttraumatic stress disorder, anxiety, depression, suicidal ideation, and other behavioral problems, even

following a brief detention period. Reports have also detailed the impacts of detention on adults, including musculoskeletal, gastrointestinal, respiratory, and neurologic symptoms, as well as anxiety, depression, posttraumatic stress disorder, difficulty with relationships, and self-harming behavior. Even further, this effect is passed on to families, because detention undermines parental authority and capacity to respond to their children's needs which is complicated by parental mental health problems.

A growing multitude of research and reports have begun to examine the many other impacts of detention centers on individuals, families, and communities. Economic impacts, for example, were found to result in financial insecurity and compounded disadvantage in particular for low-income immigrant communities in Southern California, according to a study by the UCLA Institute for Research on Labor and Employment. It is expected that additional research might uncover additional impacts, including the City's own land use analysis.

Discussion

On July 8, 2019, the Council adopted a Motion CF 19-0742 (Wesson - Cedillo - Harris-Dawson - Martinez), directing the Planning Department, in consultation with the City Attorney, to prepare and present an ordinance amending the City's Zoning Code to prohibit the construction and operation of private detention centers in the City of Los Angeles.

Subsequently, on September 9, 2019 the City received a service request form from a private organization with the following project description: "Change of use of existing 'Home for the Aged'...to a temporary residential facility with supportive services for unaccompanied minors." The proposed use in summary, was described as, "Other: Dormitory with supportive services (cafeteria, clinic, tutoring)" with further elaboration:

"The proposed new use of the property is a federal government-contracted residential facility for children ages 11-17 who cross the border unaccompanied. This would not be a detention facility. Rather, the facility would provide clothing, food, housing, tutoring, and medical assistance with the goal of finding relatives or foster parents or homes for the children. The maximum stay would be approximately 60-90 days."

This description used by the private organization does not currently fall into any of the uses enumerated in the Zoning Code. While no floor plans were submitted to substantiate the proposed use beyond the self-described use, a number of uses closely associated were explored to assess the various entitlement options. Upon further review, the self-described facility was actually intended as a privately run detention facility for unaccompanied minors which may be prohibited in the State of California under AB 32. Equally of concern, prior to the effective date of AB 32, the Federal government awarded new and extended contracts for private detention centers in the State of California which included potential sites in Los Angeles, San Diego and other cities.

The inquiry regarding the self-described facility and the new and extended contracts for private detention facilities underscores the need to clarify and define the use and any related uses for private detention centers in the City's Zoning Code. The ICO gives the City the time necessary to thoroughly analyze all the uses closely related to the private detention center use, further study land use impacts of private detention centers to surrounding communities, and review best practices for land use regulations adopted by other cities in order to draft permanent regulations to prohibit private detention centers. In addition, the City is in the midst of a housing and homelessness crisis. The ICO allows the City time to thoroughly analyze various housing types including supportive housing, transitional housing and related housing uses and ensure that these

uses are not confused with or impacted by a permanent land use regulation for private detention centers.

In addition, pursuant to Government Code Section 65858, the proposed definition of detention center in the ICO would not be considered multi-family housing. Further, the State definition for detention facilities, which is already in effect, does not include language that would suggest that detention centers could be considered multi-family housing. Thus no multi-family development or future proposed multi-family development will be impacted by the adoption of the proposed ICO.

The adoption of the proposed ICO is recommended to allow sufficient time to examine the issues surrounding private detention centers and to prepare regulations to prohibit private detention centers in the City of Los Angeles.

Conclusion

The Interim Control Ordinance is necessary to prevent any impacts caused by the construction and operation of private detention centers in the City of Los Angeles. The ICO gives the City the necessary time to further evaluate any potential impacts from the siting of such facilities, any changes to federal and state law, and conduct the necessary revisions to the Zoning Code. The ICO will temporarily prohibit the permitting, construction, operation and expansion of private detention centers in the City of Los Angeles for a period of 45 days from the date of its adoption with the option for Council to extend this ordinance for an additional 22 months and 15 days including an Urgency Clause making it effective upon publication. Adoption of an ICO is appropriate to allow the City the time to produce regulations to permanently prohibit private detention centers and ensure that the public safety, health and welfare of the City's residents is protected.

Sincerely,

VINCENT P. BERTONI, AICP
Director of Planning



Arthi L. Varma, AICP
Deputy Director

VPB:ALV:SSW:fi

Enclosure

FINDINGS

Charter/General Plan Findings

City Charter Section 556. In accordance with Charter Section 556, the proposed ordinance is in substantial conformance with the purposes, intent, and provisions of the City's General Plan. Goal 5A of the **Framework Element** calls for "[a] livable City for existing and future residents and one that is attractive to future investment". In addition, (Objective 5.4) of the Framework Element is to "[e]ncourage the development of community facilities and improvements that are based on need within the centers and reinforce or define those centers and the neighborhoods they serve." Furthermore, (Objective 5.5) of the Framework Element is to "[e]nhance the livability of all neighborhoods by upgrading the quality of development and improving the quality of the public realm." Private detention centers have a record of creating negative physical, mental, social, and economic conditions for detainees, families, and surrounding neighborhoods. Allowing private detention centers to operate in the City would create an adverse impact on the built environment particularly around schools, residential areas and Pedestrian Oriented Areas. The establishment of private detention centers would promote irreversible and incompatible development that would not be consistent with the above-stated goals and objectives.

City Charter Section 558. In accordance with Charter Section 558, the proposed ordinance is in substantial conformance with public necessity, convenience, general welfare and good zoning practice. The proposed ordinance is directly related to the General Plan, Specific Plans and other plans in that it will further improve the physical environment of the City by imposing a temporary prohibition on the establishment of private detention centers. Program 18 of the General Plan Framework is to "[a]mend the Zoning Ordinance to implement the policies and standards of the General Plan" and enacting a temporary prohibition on the establishment of private detention centers would mitigate the potential adverse impacts on the City, while a permanent ordinance would allow for the adequate time to conduct the necessary land use analysis to ensure compatibility with the goals and objectives of the General Plan.

The **Health and Wellness Element** of the General Plan Goal 1 calls for "Los Angeles, [to be] a leader in [h]ealth and [e]quity". In addition, (Objective 1.3) calls for the "[promotion of] healthy communities by focusing on prevention, interventions, and by addressing the root causes of health disparities and inequities in Los Angeles." This is further expanded upon by (Objective 1.5) directing such intervention to utilize existing tools, practices, and programs to "[improve] Angelenos' health and well-being by incorporating a health perspective into land use, design, policy, and zoning decisions." The poor conditions of private detention centers where detainees have been known to be mistreated and not given adequate access to services create an environment that does not support the City's goals of health and equity. The prohibition of private detention centers promotes healthy communities free from an environment where such a facility can negatively affect and traumatize children, families, and neighbors, residing, working or attending school near these facilities. In addition, the prohibition of private detention centers in Los Angeles is a policy intervention that prevents intensification of health disparities and inequities by addressing a systemic root cause of trauma especially amongst immigrant communities. The prohibition of private detention centers in Los Angeles is a land use regulation that incorporates a health perspective by recognizing that the health and well-being of immigrant communities is a recognition of the health and well-being of all of Los Angeles.

The **Housing Element** of the General Plan Goal 2 promotes "[s]afe, [l]ivable, and [s]ustainable [n]eighborhoods" with (Objective 2.1) which directs the City to "[p]romote safety and health within neighborhoods". This is further expanded upon by (Policy 2.1.2) which calls for the City to "[e]stablish development standards and other measures that promote and implement positive health outcomes." The prohibition of private detention centers would allow the City to promote the

above-stated goal, objective, and policy by continuing to allow growth and development that meets the needs of current and future residents, including the ability to live in neighborhoods without private detention centers that have a demonstrated record of disrupting quality of life.

City Charter Section 253. In accordance with City Charter Section 253, the proposed ordinance is an Urgency Ordinance for the immediate protection of the public peace, health, and safety. Delaying the implementation of this ordinance could create irreversible and incompatible development that would not be consistent with the protection and enhancement of neighborhoods throughout the City. The City must carefully consider the most appropriate, comprehensive, and effective alignment and implementation of all relevant laws, including California Assembly Bill 32, to make the appropriate amendments to the Los Angeles Municipal Code. This ordinance is needed to protect the public peace, health, and safety of the residents of Los Angeles by limiting the impacts of private detention centers as evidenced by studies and public testimony which describe a multitude of quality of life issues associated with private detention centers. This ordinance is of urgent matter because it is anticipated that without a prohibition on private detention centers, recommendation of the permanent ordinance regulating private detention centers would be undermined.

California Environmental Quality Act Findings

The City determined that the proposed ordinance is exempt from the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines Section 15061(b) (3), which provides that, where it can be seen with certainty that there is no possibility that a project may have a significant effect on the environment, the project is not subject to CEQA. The proposed ordinance will not result in impacts on the physical environment in that it is a temporary measure to prohibit the construction and operation of private detention centers until permanent regulations are adopted. While the ordinance is in effect, no permits to construct or operate a private detention center will be issued. If the City Council concurs, it must make this finding prior to, or concurrent with its action on the ordinance.