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CITY ATTORNEY

REPORT NO. R 21-0235
JUL 22 2021

REPORT RE:

DRAFT ORDINANCE AMENDING SECTION 12.03 AND ADDING SECTION 11.5.15 TO ARTICLE 1.5 OF CHAPTER I OF THE LOS ANGELES MUNICIPAL CODE TO DEFINE AND PROHIBIT PRIVATE DETENTION CENTERS AND COMMUNITY DETENTION FACILITIES FOR UNACCOMPANIED MINORS

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 19-0742
(CPC-2020-5811-CA)

Honorable Members:

This Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality. This draft ordinance defines and prohibits private detention centers and community detention facilities for unaccompanied minors citywide.

Background

On July 8, 2019, the City Council adopted a motion (Councilmember Wesson—Councilmembers Cedillo, Martinez, Harris-Dawson) directing the Department of City Planning Department (DCP), 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.

On September 9, 2019, the City received an application from a private organization for a residential facility for children to provide clothing, food, housing, tutoring, and medical assistance. Further investigation revealed the facility was intended to detain undocumented unaccompanied minors in the neighborhood of Arleta. The description used by the private organization did not fall into any of the uses enumerated in the Zoning Code.

On October 11, 2019, Governor Newsom signed Assembly Bill 32 (AB 32) which banned private prisons and detention facilities from operating in California and the State from entering into or renewing contracts with for-profit prison companies after January 1, 2020. 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.

On February 4, 2020, the City Council adopted an interim control ordinance (ICO) imposing a moratorium on the issuance of any demolition, building, grading, or other applicable permits to prevent the construction or operation of private detention facilities citywide. On December 16, 2020, the City Council introduced a motion (Councilmember Martinez—Councilmember Cedillo) to extend the ICO for an additional year.

On August 16, 2020, the New York Times published an article (“A Private Security Company is Detaining Migrant Children at Hotels”) that detailed the Federal Government’s use of hotels to detain undocumented immigrant children and families before expelling them. At least one site was identified in the City of Los Angeles. In response, the City Council adopted motion CF 20-1033 (Councilmember Cedillo—Councilmember Koretz) with instructions to prepare and present an ordinance that would prohibit any hotel in Los Angeles from being used to house and detain migrant children and families under the direction of private security companies.

On November 12, 2020, a proposed ordinance went to the City Planning Commission (CPC) to define and prohibit private detention facilities. The CPC voted to recommend to change the definition of Community Detention Facility for Unaccompanied Minors in the proposed ordinance.

On April 15, 2021, the Planning and Land Use Management Committee recommended adoption of the language in the proposed ordinance recommended by the DCP Staff to the CPC in the Staff Recommendation Report, finding the language therein is consistent with the request of the Council and instructed the DCP to prepare a report with recommendations and analysis of the language recommended by the CPC.

Summary of Ordinance Provisions

The draft ordinance would add two new definitions to the City's Zoning Ordinance: (1) Private Detention Center and (2) Community Detention Facility for Unaccompanied Minors. These definitions were developed to capture the scope of operations found to be characteristic of private detention centers, including those used to detain unaccompanied undocumented minors. These definitions will ensure that a detention center operator may not obfuscate their use under other allowed uses in the Code, such as Transitional Housing, Foster Care Home, Shelter, Dormitory, or Philanthropic Institution.

The draft ordinance prohibits both the Private Detention Center and the Community Detention Facility for Unaccompanied Minors uses citywide. The prohibition includes accessory uses and incidental activities to an allowed use. This incidental activities prohibition will ban the use of a hotel room for a detention facility by a private entity or non-profit. The use prohibition is not subject to any variances, exceptions or deviations.

The draft ordinance includes an urgency clause so that, if adopted by Council and approved by the Mayor, it will become effective upon publication. The use of an urgency clause pursuant to Charter Section 253 is legally appropriate given: (i) the detrimental impact of detention facilities on the detainees, including medical and mental health injuries and traumas, including from the current COVID-19 pandemic, which has resulted in outbreaks in these facilities, and (ii) the documented negative impact on communities where these facilities are located, including disruption of social and family networks and economic instability. The draft ordinance is required for the "immediate preservation of the public peace, health, or safety" insofar as it prohibits the use of these detention facilities in the City of Los Angeles. The draft ordinance includes a statement describing the urgency as required by Charter Section 253. Urgency ordinances require a three-fourths vote of the Council in order to pass.

Charter Findings

Charter Section 558(b)(3) requires the City Council to make the findings required in Subsection (b)(2) of the same section; namely, whether adoption of the proposed ordinance will be in conformity with public necessity, convenience, general welfare and good zoning practice. Charter Section 558(b)(3)(A) allows the City Council to adopt an ordinance conforming to the CPC's recommendation of approval of the draft ordinances, if the CPC recommends such approval. Similarly, Charter Section 556 requires the City Council to make findings showing that the action is in substantial conformance with the purposes, intent, and provisions of the General Plan. The City Council can either adopt the CPC's findings and recommendations as set forth in the CPC's Transmittal Report or make its own.

CEQA Determination

DCP is recommending that the draft ordinance is not a "Project" under CEQA pursuant to CEQA Guidelines, Section 15378 and, alternatively, is subject to the commonsense exemption pursuant to CEQA Guidelines, Section 15061(b)(3). These determinations are supported if substantial evidence shows that the draft ordinance is of a type that clearly does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. DCP is recommending this determination is supported because the draft ordinance does not authorize new development and because SB 35 already bans new facilities to be located elsewhere.

DCP is also recommending that the City Council adopt Negative Declaration ENV-2020-5812-ND for the draft ordinance. A negative declaration may be adopted if the City Council finds, after reviewing the Negative Declaration, and in consideration of the whole administrative record, there is no substantial evidence that the draft ordinance will have a significant effect on the environment and the Negative Declaration reflects the City Council's independent judgment and analysis.

Council Rule 38 Referral

A copy of the draft ordinance was sent, pursuant to Council Rule 38, to the Department of Building and Safety, with a request that all comments, if any, be presented directly to the City Council when this matter is considered.

If you have any questions regarding this matter, please contact Deputy City Attorney Kathryn C. Phelan at (213) 978-8242. She or another member of this Office will be available when you consider this matter to answer questions you may have.

Sincerely,

MICHAEL N. FEUER, City Attorney

By 

DAVID MICHAELSON
Chief Assistant City Attorney

DM:KCP:mh
Transmittal