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September 8, 2021

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 THE DEFINITION OF PRIVATE DETENTION CENTER; CF 19-0742

On April 15, 2021, the Planning and Land Use Committee (PLUM) Committee recommended the adoption of the Private Detention Center Ordinance (CF 19-0742), an ordinance adding Section 11.5.15 and amending Section 12.03 of the Los Angeles Municipal Code (LAMC) to define and prohibit the uses of Private Detention Center and Community Detention Facility for Unaccompanied Minors citywide. The Department of City Planning (DCP) was also instructed to prepare a report with recommendations and an analysis of the Private Detention Center Ordinance language as amended by the Los Angeles City Planning Commission (CPC).

Background

On December 10, 2020, the Los Angeles City Planning Commission heard case CPC-2020-5811-CA and approved a recommendation to adopt the Private Detention Center Ordinance with an amendment to the definition of Private Detention Center. The amendment broadened the definition of Private Detention Center to include any privately run facility where persons are incarcerated or involuntarily confined as follows:

Private Detention Center. A facility, ~~including but not limited to, a correctional or penal institution,~~ operated by a private or nongovernmental person or entity where persons are incarcerated or otherwise involuntarily confined, *including but not limited to, a correctional or penal institution.* ~~for purposes of execution of a punitive sentence imposed by a court, or detention pending a trial, hearing, or other judicial or administrative proceedings.~~ A Private Detention Center shall not include any facility described in Penal Code Section 9502, except a facility described in Penal Code Section 9502, subsection (d), if that facility is used to house persons in the custody of the federal government.

On April 15, 2021, the PLUM Committee heard the Private Detention Center Ordinance and, in lieu of the CPC recommended ordinance, approved the Staff recommended version of the ordinance and also requested a report back with an analysis of the language recommended by the CPC, including an analysis of the range of additional uses that might be captured or impacted.

Discussion

As directed by the City Council, DCP approached the development of the Private Detention Center Ordinance with a very specific and intentional lens to prohibit private detention centers that detain immigrants. On September 9, 2019, the City also received an application from a private organization seeking to operate a residential facility to detain undocumented unaccompanied minors in the neighborhood of Arleta. In response, Council adopted an Interim Control Ordinance (CF 20-0065) in order to temporarily prohibit detention centers, which will expire on December 16, 2021, while the City prepared permanent regulations.

In the development of permanent regulations, DCP conducted a comprehensive review of uses defined in the LAMC in order to prevent any overlap or inadvertent prohibitions which included uses related to housing as the description used by the private organization did not fall into any of the uses enumerated in the Zoning Code. DCP also reviewed other uses that might potentially be conflated with detention centers such as shelter and philanthropic uses. DCP's recommended language specifically defines Private Detention Center and Community Detention Facility for Unaccompanied Minors to address Council's instructions and to ensure that the use is properly defined in the LAMC, is prohibited in City, and enforceable.

Furthermore, while developing the permanent regulations for the Private Detention Center Ordinance, California State Assembly Bill 32 (AB 32) also went into effect. AB 32 prohibited the government from issuing permits or entering into contracts with private detention facilities and prisons, which in essence banned private detention in the State of California, with some exceptions. As discussed in the Staff Recommendation Report dated December 10, 2020, the definition of Private Detention Center is substantially in alignment with AB 32 with one exception related to the operation of licensed residential care facilities that may detain minors in the custody of the federal government in order to address the facilities like the one proposed in Arleta.

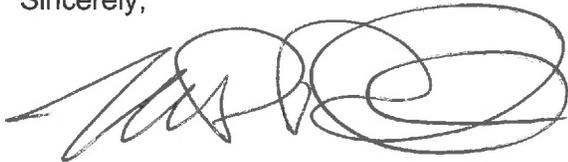
Aside from correctional or penal institutions, and detention centers as defined by the Private Detention Center Ordinance, involuntary confinement may occur in other types of facilities or executed by other operators in Los Angeles. Members of the PLUM Committee expressed particular concern about the inadvertent prohibition of facilities that provide critical mental health services if the ordinance were to be adopted with the broader definition of Private Detention Center as recommended by the City Planning Commission. Further research about mental health agencies or other county agencies that may deliver services using private contracts may be needed in order to ensure that a broadened definition does not interfere with local operations that the City may wish to support. In addition, state law such as the Welfare and Institutions Code which provides a regulatory framework for involuntary detention for the purposes of mental health treatment would also need to be examined in order to identify how local service providers and their operations might be impacted.

Broadening the definition of Private Detention Center will also require further study to better understand the topic of guardian or parental rights as it relates to the involuntary confinement of minors and facilities where minors can be placed. This will require additional research, public outreach, and discussion with stakeholders in various fields including mental health, social services and law enforcement to understand the extent of its impact. It would also warrant additional analysis of applicable regulations or licensing requirements, land use impacts and the appropriate environmental review. Similar to the challenges faced when developing the Private Detention Center Ordinance, it is anticipated that such facilities might also range from residential to institutional settings which may present additional constraints in creating objective zoning criteria to distinguish between operators which may be further complicated if a blanket prohibition is also proposed.

Conclusion

Should the Council wish to pursue the adoption of a broader definition of Private Detention Center, a reprioritization of and additional staff resources would be needed in order to initiate a new work program which may also require additional resources for environmental review. Due to the complexity of the subject matter, DCP will need to conduct additional background research and outreach to explore the topic of involuntary confinement and associated land use issues and impacts.

Sincerely,

A handwritten signature in black ink, appearing to read 'Vincent P. Bertoni', with a large, stylized flourish at the end.

VINCENT P. BERTONI, AICP
Director of Planning