



**STAFF REPORT**  
**11/20/2019**

**TO:** Honorable Mayor and City Council Members

**FROM:** Carlos Campos, City Attorney  
Best Best & Krieger LLP

**SUBJECT:** Interim Urgency Ordinance, Ordinance No. 1149, adopting a temporary moratorium on City approvals of new applications for the construction or operation of prisons, jails, correctional facilities, and detention facilities within the City, to allow consideration of appropriate amendments to the General Plan or Zoning Code to address these issues in accordance with Government Code section 65858.

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**STAFF RECOMMENDATION:**

Staff recommends that the City Council of the City of Coachella (City) adopt Ordinance No. 1149 approving a 45-day moratorium, effective immediately, on approvals of new applications for the construction or operation of prisons, jails, correctional facilities, and detention facilities on a city-wide basis, to allow the City to study appropriate amendments to the General Plan or Municipal Code in response to the potential siting of prisons, detention facilities and other correctional facilities within the City. The moratorium requires a four-fifths vote of the City Council to pass.

**BACKGROUND:**

The City of Coachella is less than 100 miles from the Mexican border. In May 2018, a sizeable group of migrants from Central America travelled through Mexico and reached the U.S. border to request asylum. (Miriam Jordan, "This Isn't the First Migrant Caravan to Approach the U.S. What Happened to the Last One?," *The New York Times* (October 23, 2018) available at <https://www.nytimes.com/2018/10/23/us/migrant-caravan-border.html> (as of Nov. 17, 2019)). Several who sought asylum were parents and children who were separated under the zero-tolerance policy that criminally prosecuted illegal entrants. (*Id.*) The migrants were typically mothers, children and young men who had fled violence in their home countries. (*Id.*)

In late 2018, large groups of migrants from Central America intended to reach the United States via Mexico to flee from violence, poverty, and political repression. (Erin Durkin "Trump threatens to close US-Mexico border over Honduran migrant caravan," *The Guardian*, (October 18, 2018) available at <https://www.theguardian.com/us-news/2018/oct/18/trump-threatens-to-close-us-mexico-border-over-migrant-caravan> (as of November 17, 2019)). Since then,

additional groups of migrants have set out toward the U.S.-Mexico border, resulting in a record level of migrants apprehended by federal immigration officials.

With peak numbers of migrants to process, federal immigration officials are now looking to add new detention centers across California. (Tatiana Sanchez, “ICE scouting locations across California for detention centers to hold 5,600,” *San Francisco Chronicle*, (May 17, 2019) available at <https://www.sfchronicle.com/news/article/ICE-scouting-locations-across-California-for-13855088.php#> (as of Nov. 17, 2019)). In late April, Immigration and Customs Enforcement (ICE) posted a request for information, seeking to “identify potential detention facilities to hold criminal aliens and other immigration violators.” (*Id.*) The potential sites could be existing facilities or land to be developed. (*Id.*) Another request was posted by ICE more recently on October 16, 2019 seeking proposals from private companies to lease their existing facilities. (Tatiana Sanchez, “California is trying to banish private immigration detention centers. ICE has other plans,” *San Francisco Chronicle*, (November 2, 2019) available at <https://www.sfchronicle.com/news/article/California-is-trying-to-banish-immigration-14802851.php> (as of Nov. 17, 2019)).

These types of facilities have drawn criticism and scrutiny for the poor management. In a February 2019 report by the California Attorney General, a number of problems were identified at ICE detention facilities located within the state, including prolonged periods of confinement without breaks, inadequate access to translators or interpreters, inability to receive medical and mental health services, and barriers to contacting relatives and support services outside the facilities. (Tatiana Sanchez, “ICE detention: California finds poor conditions in immigration holding centers,” *San Francisco Chronicle*, (February 26, 2019) available at <https://www.sfchronicle.com/news/article/ICE-detention-California-finds-poor-conditions-13647315.php> (as of Nov. 17, 2019)). In a separate 2019 report, the State Auditor found that cities were not properly managing their contracts with private operators to ensure that they comply with ICE detention standards. (*See* “City and County Contracts With U.S. Immigration and Customs Enforcement Fact Sheet,” Auditor of the State of California, (February 26, 2019) available at <https://www.bsa.ca.gov/pdfs/factsheets/2018-117.pdf> (as of Nov. 17, 2019)). The state further noted that private operators were not addressing serious health and safety issues, such as recurring problems of detainees hanging bedsheets at facilities despite a prior suicide attempts, and failure to submit ICE detainee grievances alleging staff misconduct. (*Id.*)

### ***California Legislation: SB 29 and AB 32***

In response to these issues, California has passed two laws to restrict contracts with the federal government and private prison corporations for purposes of operating prisons and detention facilities in the state.

#### ***Senate Bill No. 29: Law Enforcement - Immigration***

Effective January 1, 2018, SB 29 bars cities, counties, and local law enforcement from entering into new contracts with the federal government or private prison companies in order to detain noncitizens for purposes of civil immigration custody. It further prohibits local governments from modifying existing contracts with the federal government or private prison companies to

expand the maximum number of contract beds for immigration detention purposes. Finally, the bill prohibits cities, counties, and public agencies from conveying land or issuing a permit for the building or reuse of existing buildings by a private corporation, contractor, or vendor to detain noncitizens for civil immigration proceedings unless the specified notice to the public has been given and a public hearing held regarding the action.

### ***Assembly Bill No. 32: Private, For-Profit Prison and Detention Facilities***

On October 11, 2019, Governor Gavin Newsom signed AB 32, prohibiting the state from entering into contracts with private for-profit prisons, and banning any person from operating a private detention facility within California.

The first major component of the bill prohibits the California Department of Corrections and Rehabilitation (CDCR) from entering into, or renewing, contracts with “private, for-profit prison facilities,” on or after January 1, 2020 to house state prison inmates, and requires that all inmates under CDCR jurisdiction be removed from private, for-profit facilities on or before January 1, 2028. The bill does not prohibit CDCR from renewing or extending a contract to house state prison inmates in order to comply with any court-ordered population cap.

The second major component of the bill prohibits persons from operating a “private detention facility” within the state, unless an exception applies. A “private detention facility” means “a detention facility that is operated by a private, nongovernmental, for-profit entity, and operating pursuant to a contract or agreement with a governmental entity.” There are a number of exceptions to this general rule, including for facilities that provide (1) rehabilitative, medical, or educational services to juveniles under court jurisdiction; (2) evaluation or treatment services to persons detained or committed for mental health reasons; and (3) educational, vocational, medical, or other ancillary services provided to inmates.

This prohibition also does not apply to “any privately owned property or facility that is leased and operated by the [CDCR] or a county sheriff or ***other law enforcement agency.***” Nor does it affect a private detention facility operating under a valid contract with a governmental entity that was in effect before January 1, 2020, for the duration of that contract (but any extension would be prohibited). Lastly, the bill allows for the operation of a private detention facility if its contract was renewed by the CDCR to comply with the requirements of a court-ordered population cap.

### **DISCUSSION/ANALYSIS:**

With the passage of SB 29 and AB 32 and the record number of detained migrants for ICE to process, the City may be under consideration by ICE to establish a prison or detention facility here. Staff anticipates that federal and state agencies will seek to locate prisons and detention facilities in the Coachella Valley to offset private, for-profit facility closures in California caused by AB 32. Further, due to conflicting Federal and State legal policy on this issue, the City of Coachella must carefully consider the most appropriate policy direction to take that best represents the Community’s values while addressing these policy issues in compliance with applicable law. In order to provide the City the time necessary to properly research, consider and

draft comprehensive and effective City policy on this issue, a temporary prohibition on the siting of prisons, jails, correctional facilities, and detention facilities within the City is necessary.

An interim urgency ordinance adopted pursuant to Government Code Section 65858 to prohibit new prison and detention facilities for 45 days will address the current and immediate threat to the public health, safety, or welfare of Coachella residents. By imposing a temporary pause on development, this will provide the City time to adequately regulate prison and detention facilities within its limits.

**ENVIRONMENTAL:**

Staff recommends that the City Council find that this ordinance is not subject to the California Environmental Quality Act under California Code of Regulations, Title 14, Section 15060, subdivision (c)(2), because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment nor under subdivision (c)(3) because the activity has no potential for resulting in physical change to the environment, directly or indirectly and so is not a project. The ordinance temporarily ensures that the *status quo* is maintained.

**FISCAL IMPACT:**

No anticipated fiscal impacts.