ORDINANCE NO. 1149

AN INTERIM URGENCY ORDINANCE OF THE CITY OF COACHELLA, CALIFORNIA, 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, FOR CONSIDERATION OF APPROPRIATE AMENDMENTS TO THE GENERAL PLAN OR MUNICIPAL CODE IN ACCORDANCE WITH GOVERNMENT CODE SECTION 65858. (4/5^{ths} Vote Required.)

City Attorney's Summary

Pursuant to Government Code Section 65858, this Interim Urgency Ordinance places a moratorium on the City's approval of new applications for the construction and use of prisons, jails, correctional facilities, and detention facilities on any sites located within the City of Coachella. If adopted, this moratorium will pause approvals of new applications for land use entitlements and other permits for the development or operation of all such facilities, including for-profit prisons and facilities used to house detained immigrants, to allow the City time to study and consider contemplated amendments to the General Plan or Zoning Code to address the potential impacts of these institutions on the public welfare. The moratorium requires a four-fifths (4/5th) vote of the City Council to pass. The moratorium will take effect immediately, and have a duration of forty-five (45) days. The City may extend this moratorium one additional time by twelve (12) months by adoption of an extension ordinance, which requires notice in accordance with Government code Section 65090, a public hearing, and an additional four-fifths (4/5th) vote of the City Council to pass. The City may adopt no more than two extension ordinances, the first for up to 10 months and 15 days, and the second for up to another 12 months.

THE CITY COUNCIL OF THE CITY OF COACHELLA ORDAINS:

SECTION 1. Findings.

A. Many families have travelled to the United States in recent years to seek asylum in order escape from persecution and targeted violence in their home countries.

B. When arriving to the United States, these migrant families are often separated and detained in a manner that violates their human rights.

C. A number of reports in the media have documented the deaths of migrant detainees and children held in immigration detention facilities. In May 2018, it was reported that a 19-month old girl died weeks after being released from a migrant family detention center in Texas, allegedly due to poor medical care at the facility. (*The immigrants who have died in U.S. custody in 2018*, Erin Durkin, The Guardian, (December 29, 2018) available at https://www.theguardian.com/us-news/2018/dec/29/immigrant-deaths-us-custody-felipe-gomez-alonzo-jakelin-caal (as of Nov. 17, 2019).)

D. Investigations by civil rights organizations, and federal and state agencies have likewise documented a pattern of inhumane and unconstitutional treatment of inmates and detainees at private, for-profit prisons and detention facilities.

E. An investigation by the U.S. Department of Justice (USDOJ) found that private prisons were less safe than federal prisons, poorly administered, and provided limited long-term savings for the federal government. (USDOJ, *Review of the Federal Bureau of Prisons' Monitoring of Contract Prisons*, August 2016, available at https://oig.justice.gov/reports/2016/e1606.pdf (as of Nov. 17, 2019)). The analysis further noted that private prisons also had higher assaults, both by inmates on other inmates and by inmates on staff. Additionally, the USDOJ discovered that new inmates in the for-profit facilities were improperly housed in the Special Housing Units (SHU), which are supposed to be for disciplinary or administrative segregation purposes. Numerous other studies and reports document problems with private, for-profit prison facilities. (*See* Justice Policy Institute, *The Problem with Private Prisons*, February 2, 2018, Tara Joy, available at http://www.justicepolicy.org/news/12006 (as of Nov. 17, 2019); and American Civil Liberties Union, *Banking on Bondage: Private Prisons and Mass Incarceration*, November 2011, available at https://www.aclu.org/banking-bondage-private-prisons-and-mass-incarceration (as of Nov. 17, 2019).

F. A recent report by the California Attorney General found that private detention facilities performed insufficient safety checks for individuals on suicide watch, had inadequate mental health staffing, and had untrained staff deciding whether an individual can access medical care. (California Department of Justice, *Immigration Detention in California*, February 2019, available at https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/immigration-detention-2019.pdf (as of Nov. 17, 2019).) Similarly, Disabilities Rights California (DRC), a legal advocacy group, released a report in March 2019 detailing the unsafe conditions affecting persons with mental illness and other disabilities at a California for-profit detention facility. (DRC, *There Is No Safety Here: The Dangers for People with Mental Illness and Other Disabilities in Immigration Detention at GEO Group's Adelanto ICE Processing Center*, March 2019, available at https://www.disabilityrightsca.org/system/files/fileattachments/DRC_REPORT_ADELANTO-IMMIG_DETENTION_MARCH2019.pdf (as of Nov. 17, 2019).

G. In response to these reports, several organizations and companies have divested from private, for-profit corporations that own and operate detention facilities. For example, Bank of America announced on June 26, 2019 that they "would no longer finance operators of immigrant detention centers and private prisons." (*Bank of America to cut ties with companies that help run immigrant detention centers, private prisons*, N'dea Yancey-Bragg, USA Today, (June 27, 2019) available at https://www.usatoday.com/story/money/2019/06/27/bank-america-cutties-detention-centers-private-prisons/1589221001/ (as of Nov. 17, 2019)). The article also reported that JPMorgan Chase and Wells Fargo made similar announcements earlier in the year.

H. To address the reported inhumane conditions associated with private, for-profit facilities, on October 11, 2019, Governor Gavin Newsom signed Assembly Bill No. 32 (AB 32) into law, which will phase out the use of for-profit prisons and ban private immigration detention facilities in California starting January 1, 2020. As of January 1, AB 32 will prohibit the state from entering into or renewing contracts with private prison facilities or detention facilities unless it is necessary to comply with a court-ordered population cap. It also allows for private detention facilities only if they are leased and operated by a law enforcement agency instead of a private, nongovernmental, for-profit entity. The bill requires that private prisons be phased out completely by 2028,

I. The City's local regulations do not address the location and operation of correctional facilities and prisons. In the wake of the AB 32's passage and related state laws, as well as the potential legal conflicts between state and federal policy, the City requires time to carefully consider whether City policy will allow prisons, and correctional/detention facilities, including private, for-profit facilities to be sited within its limits and, if so, how best to regulate them. The City anticipates that federal agencies will seek to locate their prisons and detention facilities in the Coachella Valley to offset private, for-profit facility closures in California.

J. A temporary moratorium on new prisons, jails, correctional facilities, and detention facilities is necessary to address a current and immediate threat to the public health, safety, or welfare of Coachella residents. As noted above, at present the City does not have local regulations in place regarding the siting or prisons, jails, correctional facilities or detention facilities. 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 order to provide the City the time necessary to properly research, consider and draft comprehensive and effective City policy on this issue, a temporarily prohibition on the siting of prisons, jails, correctional facilities, and detention facilities within the City is necessary.

SECTION 2. Now, therefore, in accordance with California Government Code Section 65858, the City Council adopts a moratorium on the approval of new applications for

land use entitlements and permits to construct or operate prisons, jails, correctional facilities, and detention facilities as follows:

A. Definitions. For purposes of this ordinance, the following terms and definitions are used:

i. "Correctional facility" means any prison, jail, correctional facility, or detention facility, including an immigration detention facility, and a foster family detention facility, that is operated by a person, private entity, or government agency.

ii. "Moratorium" means a temporary prohibition of an activity.

iii. "New application(s)" mean any application(s) for a permit to construct or operate a correctional facility that has not been received and deemed complete on or before the effective date of this ordinance.

B. Moratorium. Notwithstanding anything to the contrary in existing City law, including but not limited to, the General Plan, the Municipal Code, the Zoning Code, and other governing City planning document or policy, a moratorium is hereby placed on: the City approval of any new application for a conditional use permit for a correctional facility, as defined in this Ordinance, subject to the following exceptions:

i. When necessary to comply with a court order; or

ii. When a decision to not approve a new application will result in a breach of contract by the City.

C. Boundaries. This moratorium applies city-wide.

D. Notification of Permittees and Applicants.

i. The City staff shall distribute a true and correct copy of this Ordinance to all correctional facility permittees in the City, and all applicants for correctional facility conditional use permits with applications pending, and

ii. The City staff shall post a copy of this Ordinance on the City's website.

E. Duration. The moratorium shall be in effect for forty-five (45) days from the adoption of this Ordinance. The moratorium may be extended as provided in Government Code section 65858.

F. Applications. The City shall accept and process applications for approvals prohibited by this moratorium if so required by any State law or court order. Any new application received and processed during the moratorium shall be processed at the applicant's sole cost and risk with the understanding that no permit for correctional facility uses will be approved with respect to a new application while this moratorium, or any extension of it, is in effect.

SECTION 3. Study. The City Council hereby directs the Department of Planning Services and the City Attorney to study and develop potential amendments to the General Plan, Municipal Code, Zoning Code or any other governing City planning document or policy related to the fiscal and legal impacts from permitting correctional facilities within the City.

SECTION 4. CEQA. The City Council finds 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.

SECTION 5. Severability. If any section or provision of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, or contravened by reason of any preemptive legislation, the remaining sections and/or provisions of this ordinance shall remain valid. The City Council hereby declares that it would have adopted this Ordinance, and each section or provisions thereof, regardless of the fact that any one or more section(s) or provision(s) may be declared invalid or unconstitutional or contravened via legislation.

SECTION 6. Effectiveness. This Ordinance is declared an interim urgency measure necessary for the immediate protection and preservation of the public peace, health, safety, and welfare for the reasons stated above, and it takes effect immediately on adoption by the City Council by at least a four-fifths (4/5th) vote, and signing by the City Clerk.

SECTION 7. Report. Ten days before this interim urgency ordinance or any extension thereof expires, the City Council shall issue a written report describing the measures that the City has taken to address the conditions that led to the adoption of this Ordinance.

PASSED, APPROVED and **ADOPTED** this 20th day of November 2019.

Steven A. Hernandez
Mayor

ATTEST:

for Angela M. Zepeda
City Clerk

APPROVED AS TO FORM:

Carlos Campos
City Attorney

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF COACHELLA)

I, Andrea J. Carranza, Deputy City Clerk of the City of Coachella, California, do hereby certify that Ordinance No. 1149 is a full, true, and correct copy, and was adopted at a special meeting of the Coachella City Council on November 20, 2019 by the following vote:

AYES: Councilmember Bautista, Councilmember Beaman Jacinto, Councilmember Gonzalez, Mayor Pro Tem Martinez and Mayor Hernandez

NOES: None.

ABSENT: None.

ABSTAIN: None.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Coachella, California, this 20th day of November 2019.

Andrea J. Carranza, MMC
Deputy City Clerk