



**FREEDOM
FOR IMMIGRANTS**



February 14, 2020

Via Electronic Mail and FedEx

Keron Jones, Chairman
Jayshawn Johnson, Vice Chairman
Daniel Ramos, Commissioner
Ricardo Rubalcava, Commissioner
Terry Delgado, Commissioner
Planning Commission, City of Adelanto

11600 Air Expressway
Adelanto, CA 92301

Re: SB 29 Compliance; Conditional Use Permit No. 96-11

Dear Chairman Jones:

These comments are submitted on behalf of the Immigrant Legal Resource Center (“ILRC”) and Freedom for Immigrants (“FFI”) regarding the Conditional Use Permit No. 96-11 to allow GEO Group to repurpose the Golden State Modified Correctional Facility located at 611 Frontage Road as well as the Central Valley Modified Community Correctional Facility located at 254 Taylor Ave into prisons for federal inmates and immigrant detainees (the “Project”). As organizational co-sponsors of SB 29, codified at Cal. Civil Code § 1670.9(d), we are concerned that the Commission intends to violate SB 29 by taking action on this permit on February 19, 2020. If the Commission moves to issue these conditional use permit in violation of Cal. Civil Code § 1670.9(d), our organizations are prepared to pursue all appropriate legal action, including challenging this unlawful agency action by a petition for a writ of administrative mandamus under Cal. Civ. Proc. Code § 1094.5 or § 1085. *Bixby v. Pierno*, 4 Cal. 3d 130 (1971); *Citizens for Amending Proposition L v. City of Pomona*, 239 Cal. Rptr. 3d 750 (2018) (The city violated its duty to comply with the ballot initiative by entering into a contract that directly violated its terms).

I. Background on the Immigrant Rights Groups

The ILRC and FFI have both a public and beneficial interest in this matter. Both organizations support or work directly with people in immigration detention across the state of California, including at the Adelanto Detention Facility. If this permit were granted, we would have to divert considerable organization resources to working with anyone detained at the new facility.

In addition, as we helped draft and we co-sponsored SB 29, we are uniquely committed to ensuring that agencies comply with the law.

The Immigrant Legal Resource Center (ILRC) works in partnership with the immigrant community to advocate for policies that create a path toward abolishing the U.S. immigration detention system. Our team works at the forefront of California's statewide campaigns to dismantle immigrant detention, as well as engaging in federal advocacy in Washington, DC. The ILRC has been a lead organization on these issues for several years -- co-sponsoring California's historic Dignity Not Detention Act (SB 29) along with FFI, as well as advocating for AB 103 and supporting the passage of AB 32. At the local level, the ILRC provides resources and support to communities and organizations working on immigration enforcement issues of which immigration detention is a tremendous component.

FFI is California-based national nonprofit organization working to abolish the U.S. immigration detention system through a two-pronged approach. First, we have built a network of 4,500 volunteers that is the only consistent watchdog inside this system. We started by building the first visitation program in California. Now our volunteers visit people in 69 immigrant prisons in nearly 30 states on a weekly basis offering a lifeline to the outside world and exposing abuse. Second, we have launched a community-based alternative to free over 250 people and to welcome immigrants into the social fabric of the United States. Through these windows into the system, we gather data and stories to combat injustice at the individual level and push systemic change.

II. Issuing a Permit at This Time Would Violate California Law

As you know, Cal. Civil Code § 1670.9(d) states that a city, county, or public agency may not “approve or sign a deed, instrument, or other document related to a conveyance of land or issue a permit for the building or reuse of existing buildings by any private corporation...” unless the entity has satisfied two conditions.

The first condition requires public notice of the action at least 180 days before the execution of the conveyance or permit. The second condition, which must also be fulfilled, requires that public comment be solicited and heard on the proposed conveyance or permit action in at least two separate meetings which are open to the public. Cal. Civil Code § 1670.9(d)(1),(2).

There have now been several posted notices¹ related to the Commission's consideration of modification of Conditional Use Permit No. 96-11 to allow the Desert View Modified Community Correctional Facility to be repurposed to house federal inmates and detainees. The first notice² we're aware of regarding this permit, relates to a hearing held Tuesday, January 22, 2020 at 7:00PM at the Adelanto Council Chambers. We are also aware of a second notice³

¹ We use the term notice as that is how the documents are titled by the City. However, we do not believe that sufficient notice has been provided under California Civil Code Section 1670.9(d).

² Available at

[https://adelanto.granicus.com/DocumentViewer.php?file=adelanto_cf1e640fab5d7533c47ffced3e678d2f.pdf&view=](https://adelanto.granicus.com/DocumentViewer.php?file=adelanto_cf1e640fab5d7533c47ffced3e678d2f.pdf&view=1)

[1](https://adelanto.granicus.com/DocumentViewer.php?file=adelanto_cf1e640fab5d7533c47ffced3e678d2f.pdf&view=1)

³ Available at <https://www.ci.adelanto.ca.us/DocumentCenter/View/1215/Notice-to-Continue-CUP-96-11-Modification->

indicating that there will be a second hearing on Wednesday, February 19th and that the hearing will be to “take public testimony” regarding the permit. More recently, an agenda posted in advance of the Wednesday, February 19th hearing indicates that staff recommendations include to either “... approve conditional use permit 96-11 ... [or] ... deny conditional use permit 96-11...” with related proposed resolutions.

However, no permit may be issued (even if its issuance, execution, or effectiveness is delayed) and therefore the permit may not be approved, until both conditions of Cal. Civil Code Section 1670.9(d) are satisfied. We do not believe that the Commission has met these requirements such that the permit could be approved. The meeting notice related to the January 22nd meeting did not attach or further described the permit, nor did it include the permit application that GEO had submitted to the Commission, nor did it attach other critical documents describing the arrangement between the City and GEO, or documents required under the California Environmental Act (CEQA). The review and consideration of such documents is necessary in order for the public to provide fully-informed comment. Until the City provides adequate notice to the public including the substance of GEO’s permit applications, it cannot begin to complete the two hearings or the 180 day notice period required under Cal. Civil Code Section 1670.9(d). Furthermore, even if adequate notice had been provided, 180 days has not passed since the initial notice regarding this permit (dated January 16, 2020). These deficiencies are not resolved by the proposed Resolution No. P-20-03 or other assurances in the agenda, including assertions that the public has been duly noticed and that the execution or issuance of the permit shall not be effective until July 15, 2020. Furthermore, under Cal. Civil Code Section 1670.9(a), the City may never enter into a contract for civil immigration custody, even if these notice conditions have been satisfied. If the permit were approved on February 19th, this would result in a violation of Cal. Civil Code Section 1670.9(d) and therefore a violation of California state law.

III. The Project is Not Exempt from the California Environmental Quality Act (“CEQA”)

California law provides that the object of a contract or permit must be lawful and not contrary to public policy. (*Russell v. Soldinger* (1976) 59 Cal.App.3d 633, 641-642, citing Civ. Code, §§ 1607, 1608, 1667, 1596.) Courts will void any contract or permit that is contrary to public policy or otherwise illegal. (*Id.* at 642.) In enacting the California Environmental Quality Act (“CEQA”), the legislature set forth a policy that public agencies shall regulate activities “so that major consideration is given to preventing environmental damage...” (Cal. Pub. Res. Code § 21000.) Towards this end, CEQA sets forth a policy of ensuring public participation in the environmental planning process. (*See Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal. 3d 929, 949 (“CEQA compels an interactive process of assessment of environmental impacts and responsive project modification which must be genuine. It must be open to the public, premised upon a full and meaningful disclosure of the scope, purposes, and effect of a consistently described project, with flexibility to respond to unforeseen insights that emerge from the process.”).) Furthermore, CEQA (Pub. Res. Code § 21000 *et seq.*) and the State Planning and Zoning Law (Government Code § 65300 *et seq.*) both provide for judicial review of agency actions through Code of Civil Procedure sections 1094.5 and/or 1085.

This Project is not exempt from CEQA because it has the potential to cause environmental impacts. The City must prepare an Environmental Impact Report (EIR) or at minimum a mitigated negative declaration. CEQA requires that a project be analyzed based on existing physical conditions on the ground, not speculative or hypothetical conditions. Therefore, it is irrelevant whether the space is currently permitted for some other use. Immigration detention facilities, as opposed to other state or federal prison uses, are more temporary. As immigration detention is a federal, civil process, federal agencies such as U.S. Immigration & Customs Enforcement (“ICE”) transfer people to other immigration detention facilities regularly. For example, according to the American Immigration Council, 60 percent of detained immigrants are transferred at least once.⁴ At the Adelanto Detention Facility in San Bernardino, another GEO Group-run immigration detention facility, there were nearly 5,000 transfers in the most recent year for which data is available, according to TRAC.⁵ In addition, people in immigration detention are often transferred to their court hearings on a daily basis or released on parole, bond, or when they win their cases. In addition, asylum seekers and other immigrants recently detained are brought into the facility often daily. This reality, combined with the increase in visits from family and the community to the facilities as well as any construction or improvements needed to make the facilities comply with federal standards for housing ICE detainees will result in increased traffic, traffic noise, and air pollution. By issuing this permit without complying with CEQA, the City is risking the public’s health. The Central Valley suffers from one of the highest air pollution burdens in the country. This project will only exacerbate it.

Given the possibility that the Immigrant Rights Groups will be required to pursue appropriate legal remedies in order to ensure enforcement of Cal. Civil Code Section 1670.9(d) should the City take action on the permit before complying with all conditions of the law, we would like to remind the City of its duty to maintain and preserve all documents and communications that may constitute part of the “administrative record.” As you may know, the administrative record encompasses any and all documents and communications which relate to any and all actions taken by the City with respect to the Project. The administrative record further contains all correspondence, emails, and text messages sent to or received by the City’s representatives or employees, which relate to the Project, including any correspondence, emails, and text messages sent between the City’s representatives or employees and GEO Group’s representatives or employees. Maintenance and preservation of the administrative record requires that, *inter alia*, the City (1) suspend all data destruction policies; and (2) preserve all relevant hardware unless an exact replica of each file is made.

Thank you for the opportunity to submit comments on the Project. We look forward to working to assure that the City upholds its duty to the public under California law. In light of the fact that the City has not satisfied either condition of Cal. Civil Code § 1670.9(d)(1),(2), we request that the City postpone the hearing set for February 19th, or in the alternative that the permit not be approved at the upcoming hearing. Please do not hesitate to contact the ILRC and FFI with any questions at the emails listed below.

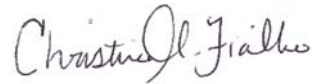
⁴ <https://www.americanimmigrationcouncil.org/research/landscape-immigration-detention-united-states>

⁵ <https://trac.syr.edu/immigration/detention/tran.shtml>

Best,



Grisel Ruiz, Supervising Attorney
Immigrant Legal Resource Center
Email: gruiz@ilrc.org
T: 415-255-9499



Christina Fialho, Co-Founder/Executive Director
Freedom for Immigrants
Email: CFialho@freedomforimmigrants.org
T: 310-765-4044

c: Victor Ponto, Olivarez, Madruga, Lemieux, O'neill, Adelanto City Attorney
c: Adelanto City Council