
CITY OF BALTIMORE

BRANDON M. SCOTT
Mayor



DEPARTMENT OF LAW
EBONY THOMPSON
CITY SOLICITOR
100 N. HOLLIDAY STREET
SUITE 101, CITY HALL
BALTIMORE, MD 21202

April 17, 2026

The Honorable President and Members
of the Baltimore City Council
Attn: Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 26-0157 – Private Detention Centers – Citywide Ban

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 25-0157 for form and legal sufficiency. The bill would create a new use category in the Zoning Code for “private detention center” and would define that use as “any building, facility, or structure that is operated by a private, nongovernmental entity pursuant to an agreement with a federal, state, or local government” and “is used, in whole or in part, to house or detain an individual prior to trial or sentencing; during the term of the individual’s sentence; for a federal immigration violation; or for another judicial or administrative process or proceeding.” The bill would exclude private detention centers from the existing definitions of “residential-care facility” and “government facility”.

As a threshold matter, the Council should note that 2026 House Bill 1017 is currently on the Governor’s desk for signature; if enacted, that bill would impose a statewide ban on the ability of private entities to operate detention centers, and would also prohibit local governments from approving the construction or operation of detention centers used by private entities. 2026 HB 1017 has a unique contingency provision stating that if this state ban is rendered unenforceable by a State or federal court, then a more limited ban would take effect that prohibits local governments from approving the construction or operation of a private detention facility *unless* the facility “is located in a zone that expressly authorizes private detention facilities.”

Either way, if 2026 HB 1017 is enacted, Council Bill 26-0157 would be redundant and, to the extent of any inconsistency with the State ban, preempted.

With that threshold matter addressed and turning to Bill 26-0157 on its own terms, the Law Department can approve it for form and legal sufficiency, but with significant caveats as explained below.

Risk of Federal Constitutional Challenge

The bill's ban could be challenged as violating the Supremacy Clause of the U.S. Constitution if the federal government decided it wanted to contract with a private party for a detention facility in the City. *See* U.S. Const. art. VI, cl. 2. As a general matter, the Supremacy Clause—and the doctrine of intergovernmental immunity arising from it—means the federal government is exempt from state and local laws—including zoning laws—that conflict with federal power bestowed by the Constitution. *See, e.g., Pan Am. Health Org. v. Montgomery Cnty., Md.*, 889 F. Supp. 234, 238–39 (D. Md. 1994), *aff'd*, 59 F.3d 167 (4th Cir. 1995).

Similar statewide bans on private detention centers (although not effected through zoning laws) have been struck down in at least two federal circuits. *See CoreCivic, Inc. v. Governor of New Jersey*, 145 F.4th 315, 319 (3d Cir. 2025) (New Jersey law preventing private parties from making, renewing, or extending contracts with the federal government to detain people for civil immigration violations violated intergovernmental immunity doctrine under the Supremacy Clause); *Geo Grp., Inc. v. Newsom*, 50 F.4th 745, 750-51 (9th Cir. 2022) (California law prohibiting a person from operating a private detention facility under contract with the federal government violated both intergovernmental immunity and preemption aspects of Supremacy Clause).

The courts in both cases found a violation of the Supremacy Clause as it pertains to the federal government's plenary immigration enforcement authority, despite the fact that the laws at issue were crafted to apply neutrally to private parties and did not *directly* attempt to regulate the federal government. *See CoreCivic*, 145 F.4th at 322, 325-26 (although “the text of the law does not apply to the federal government . . . we can easily see the law for what it really is: a regulation laid upon the contract of the government. The law prevents the federal government from choosing how and through whom it will carry out a core federal function.”) (citation modified); *Geo Grp., Inc.* 50 F.4th at 761 (“Even assuming it is a neutral regulation of private conduct, [the law] prohibits ICE from exercising its discretion to arrange for immigration detention in the privately run facilities it has deemed appropriate. Therefore, we reject California’s argument that [the law] does not implicate intergovernmental immunity.”) (citation modified).

That said, at this stage, the Law Department can still approve this bill for form and legal sufficiency for a few reasons. First, the 4th Circuit (in which Baltimore is located) has not weighed in on this exact topic yet, and the dissenting opinions in both cases above indicate there is room for debate about what constitutes direct interference with federal operation for purposes of the Supremacy Clause. *See CoreCivic, Inc.*, 145 F.4th at 329-32 (“New Jersey’s law no doubt affects the Federal Government’s civil immigration-detention operations. But neither intergovernmental immunity nor preemption invalidates [the law] in my view. Intergovernmental immunity covers only those state laws that either *directly regulate or discriminate against the United States*. [The law] does neither. It applies only to state, local, and private entities. . . . State laws that apply only to private contractors but still affect the Federal Government, even substantially, are indirect regulations.”) (Ambro, J., dissenting) (emphasis added); *Geo Group, Inc.*, 50 F.4th at 763 (“The majority errs by extending intergovernmental immunity to nondiscriminatory, indirect regulation of the government.”) (Murguia, J., dissenting).

Moreover, both cases above implicated an existing private immigration detention center in contract with the federal government. That fact, and the breadth of a statewide bans, meant that those laws substantially interfered with the federal government’s existing immigration enforcement activities in the area. The proposed City ban, by contrast, does not implicate any existing or proposed detention centers in the City, and any existing centers would be permitted as nonconforming uses.

If the City’s ban was challenged, it is possible a court would say the City ban alone does not amount to the kind of substantial interference with federal immigration priorities at issue in the New Jersey and California cases because the ban is not statewide and there may be other detention options for the federal government nearby. *But see CoreCivic, Inc.*, 145 F.4th at 328 (noting that “even a patchwork” of such laws could frustrate the government's ends) (citation modified).

Uniformity / Equal Protection Consideration

As with any zoning regulation, the bill’s proposed ban on private detention centers must be tied to legitimate land use considerations. *See* Md. Code, Land Use, § 10-202 (in relevant part, permitting the City to regulate “the location and use of buildings, signs, structures, and land”). The ban here applies only to privately operated detention centers, not centers operated by governmental entities. By distinguishing between governmental detention centers and private detention centers, the bill could be challenged on constitutional uniformity and equal protection grounds. *See, e.g., Prince George’s Cnty. Council v. Concerned Citizens of Prince George’s Cnty.*, 485 Md. 150, 179-81 (2023) (“Maryland’s uniformity statute . . . reassure[s] property owners that they will not be subject to arbitrary or invidious discrimination or government favoritism or coercion. Modern courts, including this one, understand uniformity as a state law counterpart to the constitutional equal protection prohibition against purely arbitrary zoning classifications and restrictions, and generally apply similar principles of review.”).

If challenged, the City would need to articulate a legitimate governmental *land use* interest for using the Zoning Code to regulate private detention centers differently than governmental detention centers. To prevent this kind of challenge, the bill could be amended to ban *all* detention centers except those currently in existence. A similar ban was recently enacted by Baltimore County. *See* County Council of Baltimore County, Bill No. 14-26.

Minor Technical Amendment

On page 1 in lines 14 and 24, strike “Section 1-311(y) and (z)” in each instance and replace it with “Section 1-311(x) and (y)”.

Conclusion

The Law Department can approve the bill for form and legal sufficiency, but is duty bound to highlight the above caveats to inform the Council’s consideration.

Sincerely,



Jeffrey Hochstetler
Chief Solicitor

cc: Ebony Thompson, City Solicitor
Nina Themlis, Mayor's Office of Government Relations
Ty'lor Schnella, Mayor's Office of Government Relations
Hilary Ruley, Chief Solicitor, General Counsel Division
Ashlea Brown, Chief Solicitor
Michelle Toth, Assistant Solicitor
Desireé Luckey, Assistant Solicitor