



TO: Elizabeth Pauli, City Manager
FROM: Anita Gallagher, Assistant to the City Manager, City Manager's Office
COPY: Community Vitality and Safety Committee; Linda Stewart, Director,
Neighborhood and Community Services
SUBJECT: Northwest Detention Center Informational Report
DATE: July 25, 2019

On May 9, 2019, the Community Vitality and Safety Committee discussed various questions and concerns regarding GEO Group's Northwest Detention Center facility on the Tacoma tideflats. Following the meeting, City Manager's Office staff compiled a list of items from that discussion and gathered responsive information, which follows below.

Health and Quality of Life

- There were several comments received from community members during the May 9, 2019 CVS meeting around food quality, contamination, and safety. The Committee requested that staff research the regulatory structure in place regarding food safety and any investigations that have taken place.
 - **Response:** The Tacoma-Pierce County Health Department's regulatory role of the Northwest Detention Center is limited to inspecting food preparation and service at the request of the NWDC. They conduct unannounced inspections at minimum two to three times per year, and investigate any complaints. To date, they have been unable to substantiate any of the food contamination complaints they have received. TPCHD staff shared with City staff that the faculty and staff at the NWDC are served the same food as the detainees.

Complaints about food safety and foodborne illness can be submitted to the TPCHD via phone, email, or using this link, which provides the option to submit an illness notification in addition to a general complaint: <https://www.tpchd.org/healthy-places/food-safety/report-foodborne-illness-or-food-safety-complaint>. Inspection reports for the NWDC for the last two years are available on the TPCHD website via the Inspection Reports tool.

- The CVS Committee requested to learn what information could be obtained from local healthcare facilities that may have treated detainees from the facility.
 - **Response:** The United States Public Health Service staff are responsible for healthcare and managing disease outbreaks at the NWDC. They report to ICE Health Services, a part of Homeland Security. The facility is not required to report any cases of outbreaks to the Tacoma-Pierce County Health Department. City staff were unable to attain information from other medical facilities regarding any treatment of detainees.



- The CVS Committee requested to learn more about the mental health services and library/other recreational opportunities there are at the facility.
 - **Response:** An ICE representative has provided the following response: “Detainees are provided 24/7 access to medical services, including mental health care. Detainees are provided a minimum of one hour a day of law library access and may request more if needed. Every housing unit is equipped with books, televisions, tablet computers, recreational equipment such as ping pong tables and exercise equipment, and board games. Detainees are provided one hour of outdoor recreation per day where they can utilize exercise equipment and/or play team sports such as soccer and basketball. Religious services are provided weekly, and public visitation is five days a week.”

- The CVS Committee requested information as to any contracts that the City has with third-party service providers that could be further utilized to help detainees at the facility.
 - **Response:** The Office of Equity and Human Rights has a contract with Northwest Immigrant Rights Project as part of the Deportation Defense Fund, that is directly applicable to the NWDC. Neighborhood and Community Services has contracts with human services providers, but those service providers would need to have the capacity and desire to provide services within the facility and that is unknown at this time.

- Public comment from community members was received stating that they are hearing of detainees having to work eight-hour days performing maintenance duties at the facility but are not being paid. Would it be possible to investigate this allegation, or if a complaint of this nature has already been raised by a detainee, share the results of that investigation?
 - **Response:** An ICE representative has provided the following response: “As per the 2011 Performance Based National Detention Standards (PBNDS), detainees are be provided the opportunity to participate in a voluntary work program. Participation in this program is not compulsory, but voluntary. The program is further detailed in the PBNDS. The purpose is to provide detainees opportunities to work and earn money while detained, subject to the number of work opportunities available and within the constraints of the safety, security, and good order of the facility. The intent of the Voluntary Work Program is to reduce the negative impact of confinement through decreased idleness, improved detainee morale, and fewer disciplinary incidents. Money earned through the program also allows detainees to buy commissary goods, and pay for phone calls, etc. Due to ongoing litigation, ICE is unable to comment further.”



Emergency Response

- Members of the Commission on Immigrant and Refugee Affairs requested to learn more about the NWDC's emergency plan to "shelter in place," and expressed desire for the facility to have an emergency evacuation plan.
 - **Response:** It is understood by the Tacoma Fire Department that federal facilities/ (ICE) detention centers, including Service Processing Centers and Contract Detention Facilities, are required by federal regulators to have an evacuation plan, per the ICE Performance-Based National Detention Standards 2011 Operations Manual [Chapter on Emergency Plans](#).

Information received in April of 2017 from James Black, then-Vice President of the Western Region for GEO Group, provided some information about the facility's emergency plans, which is quoted directly below.

"Evacuation within the Facility: Used when some areas of the facility are habitable or structurally sound, but others are not. Detainees would be evacuated from one secure location to another within facility grounds. Provisions exist to separate visitors from detainees.

Evacuation outside the Facility: An evacuation location for each detainee population type is identified outside the secure perimeter but maintained on facility grounds. Department responsibilities are identified and provisions exist in the event location adjustments are required. Water, food, bedding, clothing, lighting, and health services adequately defined.

Evacuation of Entire Facility: Used only if the facility is determined to be structurally unable to accommodate people or conditions require total evacuation (noxious or toxic fumes, radioactive contamination, etc.). Coordination with all of our transportation hubs for vehicles and equipment needs (additional restraints) if required. Tacoma Fire Department and Fire/Rescue team identified as point of contact for emergency response. Staging for detainees referenced. Temporary Emergency Housing in the event of total evacuation- policy states detainees will be temporarily relocated to other local locations.

While we cannot give you all of the specific details to the evacuation plan for security reasons, this is an accurate general description of the plan."

Additional information received from an ICE representative on July 22, 2019, addresses this question as follows: "As per the 2011 Performance Based National Detention Standards (PBNDS), ICE requires emergency plans, to include evacuation plans, in place for all facilities, including the Northwest Detention Center. "Sheltering in place" is a part of any reasonable and comprehensive response plan, and may be the most appropriate action in certain emergencies;



however, it is certainly not the only element. In the event of any emergency, ICE and GEO would work closely with responding agencies such as local police, fire, and HAZMAT to ensure the continued health, safety, and well-being of detainees and staff.”

- A CVS Committee Member mentioned that he had heard that there needs to be a certain proportion of guards to detainees in the event of an evacuation, and that it wouldn't be possible to meet that standard at the Northwest Detention Center. Is this true, and if so, what is the proportion?
 - **Response:** An ICE representative has provided the following response. “As per the 2011 Performance Based National Detention Standards, the NWDC has in place contingency plans to quickly and effectively respond to emergency situations and to minimize their severity. ICE takes the health, safety, and well-being of detainees extremely seriously. This assertion by the council member is incorrect.”
- The CVS Committee requested cost estimates for calls for service for public safety.
 - **Response:** Tacoma Fire Department has responded to the NWDC for 1,203 incidents, year-to-date since 2004. Over the past three years, the totals are: 129 in 2016, 140 in 2017, and 130 in 2018. The majority of these responses were for EMS incidents. The average cost for an EMS call for service is \$900. So, the cost estimates for the past three years would be: \$116,100 in 2016, \$126,000 in 2017, and \$117,000 in 2018. These costs are billed to ICE, and are not subsidized with EMS levy funds.

Over the course of the past two years, Tacoma Police Department has received 174 calls for service to the address of the Northwest Detention Center (1623 East J Street). It should be noted that the calls are logged according to the building address whether or not the call originated inside of the facility or externally. A call for service does not necessarily indicate that a crime was committed or that a report was generated. It is difficult to calculate the personnel costs for the responses to these calls for service, so that dollar amount is unavailable.

- The CVS Committee requested to learn whether or not the Tacoma Fire Department has worked with the NWDC on the facility's emergency response plan.
 - **Response:** Tacoma Fire Department has participated in various annual training exercises with NWDC staff, but do not have a coordinated plan for evacuation of detainees.
- The CVS Committee requested information as to whether or not the current International Fire Code requires exit planning in the event of an emergency, and if not, if the City could adopt an Ordinance requiring certain occupancy types or buildings in lahar zones to have evacuation and exiting plans.



- **Response:** Currently, our Fire Code requires building exiting plans for certain occupancies in the event of a fire. None of our Codes (Land Use, Building, or Fire) require area evacuation plans. It would be within the City's authority to enact a requirement that a facility meeting certain criteria in a volcanic or other defined hazard area have a plan to evacuate all expected occupants in a lahar situation, which could include interim sheltering in place, to an acceptable area outside of the hazard area. However, from an emergency management perspective, such a plan might not be effective depending on how an actual emergency unfolds. Additionally, initial review and monitoring of periodic updates to such plans may require additional City budget funding to the responsible department(s). With respect to the NWDC, an ICE Policy applicable to contract detention centers does require an evacuation plan in the event of a fire or other emergency, but the City has not been furnished with such a plan for the NWDC.
- The CVS Committee requested to learn if there is a Memorandum of Understanding (MOU) between the NWDC security and Tacoma Police Department.
 - **Response:** Tacoma Police Department does not have an MOU with the NWDC. Tacoma Fire Department does have an MOU with the facility that was signed in May of 2014. The MOU was established to create an understanding about how each party (Tacoma Fire Department and GEO Group, Inc.) could request assistance during an emergency. The understanding acknowledges the City will provide the same level of service it provides to the community as whole in the event of an emergency. The City is not paid for services provided. Of note, a provision in the agreement states that, in the event of a mass evacuation, all transportation vehicles should (but are not required to) be equipped with specific types of restraint devices for all individuals being transported. This provision is not mandatory. If an event were to occur, the Tacoma Fire Department does not have, nor will it provide, such vehicles and equipment with restraining devices. A copy of the MOU is provided with this report.

Regulatory Oversight

- The CVS Committee requested information as to whether or not the NWDC is the only detention center of its type in the United States that is privately owned and operated.
 - **Response:** The NWDC is not the only facility privately owned and operated for the purpose of immigrant detention. The GEO Group owns and operates other immigrant detention facilities throughout the United States. There is another business enterprise that also operates immigrant detention facilities under contract with the federal government.
- The CVS Committee requested to learn if it might be possible for the City to be notified if a detainee makes a formal complaint and to be informed of the result of the investigation.



- **Response:** An ICE representative has provided the following response: “Detainees may submit grievances or complaints informally or formally to ICE, as described in the 2011 Performance Based National Detention Standards (PBNDS). Detainees have access to hotlines Monday through Friday from 8 a.m. to 8 p.m. (Eastern time) by which they can report complaints about facility-related grievances. ICE reviews and resolves detainee complaints according to its established procedures and processes.
Pursuant to Federal law, regulation, and policy, ICE cannot share any information about a person (including, but not limited to, information about an individual’s status, immigration case, detention details, health care, and benefits applications) with third parties without their written consent. If you are seeking access to Federal records, the proper mechanism is through a Freedom of Information Act request. The Freedom of Information Act (FOIA), 5 U.S.C. § 552 provides any individual a right of access to any non-exempt federal government record. For more information and detailed instructions on how to submit a FOIA request, please see <https://www.ice.gov/foia/request>.”
- The CVS Committee requested to learn more about the oversight role of ICE. Any information as to how federal agencies monitor their operations and evaluate their performance would be helpful.
 - **Response:** An ICE representative has provided the following response: “ICE audits for PBNDS compliance and reports to Congress its efforts to implement and enforce PBNDS standards at all ICE facilities. ICE’s enforcement of PBNDS has been a priority given ICE’s commitment to fair and humane treatment of ICE detainees. Additionally, the NWDC is subject to DHS audits, third party inspections, and civil rights inspections.
The PBNDS and recent inspection reports are available on ICE.gov. Other entities that conduct oversight and/or inspections include the Department of Homeland Security Office of the Inspector General, the Government Accountability Office, Nakamoto Group, and the American Correctional Association. Please consult these entities for any published reports or questions on their evaluation procedures.”
- The CVS Committee requested a copy of the contract between ICE and the GEO Group, as well as the standards that ICE requires of the contracted detention facilities.
 - **Response:** An ICE representative has provided the following response: “The standards are detailed in the 2011 Performance Based National Detention Standards, which is a publicly-available document posted on our website: <https://www.ice.gov/detention-standards/2011>
The contract is not currently a public document; however, as stated above for access to Federal records, the City may file a Freedom of Information Act request.”



ICE Procedures

- The Commission on Immigrant and Refugee Affairs requested to learn if the City could encourage ICE to provide advance notification (such as 30 days' notice) to individuals who will be detained to reduce the negative impacts on their families.
 - **Response:** The City Council could by Resolution recommend or request that ICE, locally or nationally, implement such a policy. Such a Resolution would not be binding, but if the Council desired to express their collective opinion on the subject, it is well within their authority to do so. Individual Council Members are also free to express their individual views, but in order to express the views of the City Council, it must be a Resolution.
Additionally, an ICE representative has provided the following response to the question on whether or not advance notice to individuals and family members is possible: "No. ICE does not share information about law enforcement operations prior to their occurrence."

Historical Context

- The CVS Committee requested the history of the Northwest Detention Center facility, including the types of permits that were required and a summary of the City's actions regarding the facility since it began operations.
 - **Response:** In 2000, Immigration and Customs Enforcement (ICE) started a process to site an additional detention facility in the Puget Sound region to alleviate overcrowding at their King County facility. Correctional Services Corporation (CSC), GEO Group's predecessor, was involved in the siting process and operated it until the GEO Group acquired CSC in 2005.

The ICE public siting process included participation of the State of Washington, Pierce County, the Port of Tacoma, City of Tacoma, and other public and private parties. Two sites were identified for the development of the Northwest Detention Center facility in Tacoma.

Washington State helped facilitate the financing of the facility through Washington's Economic Development Finance Authority (WEDFA), an independent agency within the executive branch of state government. WEDFA facilitated construction of the NWDC by issuing approximately \$57 million in economic development revenue bonds in 2003, and later over \$54 million in bonds to finance the expansion of the facility in 2011. Each bond issuance had the approval of Washington's then-current governors, Gary Locke and Chris Gregoire. City Council Member Kevin Phelps wrote to WEDFA to assure investors that Tacoma welcomed and supported the development of the NWDC.



At the time the NWDC was permitted in 2002, it was already allowed within the zoning at the location in the Port of Tacoma area, so neither the City Council nor City staff made any zoning or regulatory changes to allow the NWDC. The project went through a standard permitting process for an allowed use within the zone. No City Council approval was necessary for the NWDC. Aside from Resolution 34722, which merely expressed support, there were no Council actions related to the NWDC. The facility was operational by 2004.

The GEO Group has operated the facility under contract with ICE since 2005. The Florida-based company has been in partnership with ICE since the 1980s. In 2015, ICE renewed GEO's contract for the NWDC through 2025. The NWDC is one of 141 correctional and detention facilities operated by the GEO Group.

In 2017, Mayor Marilyn Strickland sent a letter to the GEO Group asserting that detaining individuals without proper due process bears a direct relationship to the conduct of business for which they are licenses in the City of Tacoma, and that failure to certify compliance would result in a loss of their business license. The warden of the NWDC signed a Certificate of Compliance on behalf of GEO stating that they were not engaging in activities that would constitute a violation.

In March of 2017, the City Council passed an Ordinance enacting emergency interim zoning regulations that were intended to prohibit or require conditional use permits for new or expanded correctional facilities in the interim and allow time for the City Council and Planning Commission to conduct appropriate research and analyze potential impacts and applicable local, state, and regional policies. In February of 2018, the City Council passed an Ordinance establishing permanent land use regulations which rezoned the Port Maritime Industrial district where the NWDC is sited to prohibit the construction of new correction and detention facilities, and prohibit the expansion of existing ones, including the NWDC. That makes the NWDC a "non-conforming use". The NWDC may continue in operation, but may not expand, and if operations cease, they may not restart. This zoning change is the subject of the current litigation in both state and federal court. Please refer to the Legal Guidance section of this report for additional information on that litigation.

Immigration Policy

- The CVS Committee requested to learn what resources might be available for City Council Members and members of the Commission on Immigrant and Refugee Affairs can utilize to attain updates on changes to federal immigration policy.
 - **Response:** There is currently no objective single source for news about the changing landscape of federal immigration policy that City staff would recommend at this time. However, the City's government relations personnel can and will stay



in regular contact with colleagues at the offices of our congressional delegation to learn about potential legislation related to immigration and can share that information with the City Council and Commission on Immigrant and Refugee Affairs as it arises.

- The CVS Committee requested to learn about the methods by which detainees at the Northwest Detention Center had been identified as warranting detention and how they had been brought to the facility in Tacoma, as opposed to other locations.
 - **Response:** An ICE representative has provided the following response: “The Northwest Detention Center (NWDC) serves as both the primary immigration detention center in the Pacific Northwest, and as a reliever facility for the southern border. Generally, someone arrested or transferred from a correctional facility in the Pacific Northwest will be housed at the NWDC pending the outcome of their immigration case. Additionally, some detainees may be transferred to the NWDC from other facilities so they may be closer to family or a support network. For the recent arrivals from the southern border, these placement decisions are made by ICE Headquarters.

Legal Guidance

- The CVS Committee inquired as to what actions a City Council Member can take independently, not acting as an agent of the City.
 - **Response:** When Council Members act in their individual capacity, clearly representing that they are not acting in their official capacity or representing the City, there are few definitive legal restrictions. The principal areas to be mindful of are apparent conflicts of interest, and the appearance of fairness doctrine. Conflicts of interest are defined in State law as using your official position to secure special privileges or special exemptions for yourself or others, and entering into contracts with or having other personal financial interests with the jurisdiction you serve. The appearance of fairness doctrine applies where the Council is acting in quasi-judicial manner, meaning they are acting as the judges in a hearing rather than as legislators. The doctrine prohibits council members from participating in the hearing and decision if the conduct or relationships either in their official or unofficial conduct makes it appear to a reasonable person that they cannot be impartial.
- The CVS Committee requested information about the potential for amortization (banning and phasing out of GEO Group’s business) of the Northwest Detention Center.
 - **Response:** The Washington State Growth Management Hearings Board (GMHB) recently agreed with the City’s argument that the NWDC is not an essential public facility under Washington State law, but the GEO Group has appealed that decision. In GEO’s Thurston County appeal of the GMHB decision, the Judge recently remanded the matter to the GMHB for further consideration. The reason



was that the GMHB simply decided that the NWDC was not within the scope of Washington's Essential Public Facilities (EPF) statute. The Thurston court considered that an error and remanded to the GMHB with direction to apply the established two-part EPF test to the NWDC. While the majority of the City's in-house counsel's briefing to the GMHB was arguing that the NWDC fails the two-part test, there is a possibility that the Board could find that the NWDC is an Essential Public Facility. That would leave the City with an appeal decision. In addition to an adverse decision in the urgent litigation, the federal government could declare the NWDC a federal facility.

In either a scenario in which the NWDC is found to be an EPF or declared to be a federal facility, the effect of a ban and amortization would be entirely negated. It would be legally premature to consider a ban and amortization until the results of the litigation are known. Additionally, even if the decision that the NWDC is not an EPF is upheld, the federal government could initiate litigation arguing that such a ban would frustrate or interfere with federal activities and would be preempted under federal law. Also, similar to the City's billboard ban, GEO Group could mount a legal challenge on the basis that a ban and amortization provisions are inadequate to allow them an opportunity to recover their investment.

- The CVS Committee inquired as to the legal aspects of the City's business licensing in terms of regulatory authority.
 - **Response:** The NWDC does not appear to fall within any of the types of businesses for which a regulatory business license would be required under Tacoma Municipal Code Title 6 (Tax and License Code).

The City has the responsibility of applying the same standards in a fair and equitable manner to all businesses. This means the City cannot revoke a business license unless a business is failing to meet the standards outlined in the City's Municipal Code.

The City has a variety of codes under which it may close a business down. For example, if there are significant enough building violations at a business, the City may close down the business, at least until the violations are fixed.

The City also has business license regulations, which allow the City in certain circumstances, to close a business.

Under Tacoma Municipal Code (TMC) 6B.10.140, the City of Tacoma has the authority to revoke a license based on certain grounds among which include:

- The licensee or employee has been convicted of a crime involving the business;
- The licensee's continued conduct of the business will result in a danger to the public health, safety, or welfare by reason of:



- the licensee, or his/her agents or employees, have in the conduct of the business, violated any local, state, or federal law relating to public health or safety
- the conduct of the business has resulted in the creation of a public nuisance; or
- the licensee is tolerant of a public nuisance or criminal activity which the licensee can reasonably control or prevent

A business has the right to appeal a revocation within 10 days to the City's Hearing Examiner. The business may continue to operate throughout the appeal process.

Under TMC 6B.10.145, the City of Tacoma can summarily suspend a license if any of the listed conditions are found by the City:

- conditions exist that are an immediate hazard to life or property
- violation of uniform controlled substances act
- violation of law against gambling or prostitution

An informal hearing is scheduled within three business days of the suspension with the Finance Director. The Finance Director considers all of the information and decides whether the suspension should be upheld.

The Finance Director's decision can be appealed to the Hearing Examiner. The business is required to remain closed throughout the appeal process.