THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

January 19, 2024

Hon. Michael McSweeney
City Clerk and Clerk of the Council
141 Worth Street
New York, NY 10013

Dear Mr. McSweeney,

Pursuant to Section 37 of the New York City Charter, I hereby disapprove Introductory Number 549-A, which would amend the Administrative Code of the City of New York "in relation to banning solitary confinement in city jails and establishing standards for the use of restrictive housing and emergency lock-ins." Introductory Number 549-A would replace sound correctional practices with a series of misguided mandates governing the management of persons who commit serious acts of violence while in custody. In doing so, it would make the City's jails less safe in several important ways.

Although the title of Introductory Number 549-A states that it relates to prohibiting solitary confinement (which is generally understood to mean holding an individual in a jail cell for 22 or more hours a day without meaningful human contact), that is *not* what Introductory Number 549-A is about. Solitary confinement was already eliminated from New York City jails in 2019. Rather, Introductory Number 549-A would establish far-reaching restrictions on the operations of the Department of Correction (DOC) that would increase the risk of harm to incarcerated persons in the City's custody and to the City's correctional staff as follows:

First, Introductory Number 549-A would undermine the restrictive housing program developed in consultation with the Federal Monitor which, pursuant to a court order issued in *Nunez v. City of New York*, 11 CV 5845 (SDNY), will require such Monitor's approval. Currently, persons placed in restrictive housing after committing a violent act—for instance, stabbing another individual or assaulting staff—are allowed out of cell in a congregate setting for seven hours a day. But Introductory Number 549-A requires that persons placed in a restrictive housing unit after committing a violent act must be out of cell 14 hours a day, the same as for general population, and must be given access to programming and amenities greater than those available to general population, purportedly "to encourage good behavior." In other words, Introductory Number 549-

A eliminates any negative consequences for those who commit violent acts on other persons or on staff. To make matters worse, Introductory Number 549-A requires that placement in restrictive housing for persons in custody be reduced from the current 60 days to 15 days unless a person engages in conduct that presents an "imminent" threat of harm to themselves or others during that time. The notion that 15 days of programming, no matter how skilled the counselor, is sufficient to effect meaningful change in a person with a known propensity for serious violence is not supported by evidence or experience. Change takes time and commitment, and 15 days is barely enough to get started.

Second, Introductory Number 549-A would make escorting and transporting persons in custody far more dangerous by disallowing the use of restraints on individuals 22 years of age or older during transportation to and from court or elsewhere outside the Department's facilities absent an individualized determination that restraints are necessary to prevent an "imminent risk" of injury. Illustrating the lack of coherence that characterizes the bill, for reasons not explained, and perhaps reflecting an inadvertent error, Introductory Number 549-A would permit restraints for those under 22 during transportation but not for those 22 or over. Each day, DOC sends 500 or more people in custody—25 or more buses with 20 or more persons on each bus—to courts in the five boroughs. As many as a third of those persons face homicide charges. Currently, persons are restrained— typically two persons are handcuffed together—for the safety of other persons in custody and DOC staff. A prohibition on restraining persons during transportation would lead to chaos. Police officers, after all, do not transport even one arrestee without restraint, let alone 20.

Third, Introductory Number 549-A removes DOC's necessary discretion in conducting "lock-downs"—periods when, for everyone's safety, incarcerated persons are held in their cells following a disturbance in a housing unit. Introductory Number 549-A establishes a fixed limit of four hours on lock-downs. While most such disturbances can be resolved in four hours or less, some inevitably require more time to investigate and restore order. An inflexible four-hour rule is not sound correctional policy. Introductory Number 549-A also requires persons to have telephone access during emergency lock-ins, even if that would enable violence, including gang violence. This requirement is also poor correctional policy. If two gangs clash in a housing unit, a person with access to a telephone could communicate with fellow gang members in other units (by calling a friend who is not incarcerated and conferencing in gang members who are incarcerated), and violence could easily spread.

Tellingly, the Federal Monitor, appointed under the *Nunez* consent decree and tasked with approving restrictive housing policy, has provided an assessment stating that, if Introductory Number 549-A were implemented, "in all likelihood, [it] would create or exacerbate the unsafe conditions" in New York City jails. The Monitor is clear about the heightened safety risks to people who work and live in Rikers created by this bill:

> Council Bill 549-A includes absolute prohibitions in areas where at least some discretion is necessary, contains requirements that are both vague and ambiguous, contains multiple internal inconsistences, and sets standards that are not consistent with sound correctional practice. These issues directly impact various Department policies and procedures addressed by the [Federal] Court Orders and which require the Monitor's approval. . . . The Monitor will not approve policies and procedures

> that include the problematic requirements [in 549-A] because they do not reflect sound correctional practice and would further exacerbate the extant unsafe conditions. Consequently, the Monitoring Team must reiterate its concern that the bill's requirements . . . will create situations that will impair, if not prevent, the Department from being able to comply with the [Federal] Court Orders.

Monitor's Assessment dated January 12, 2024, at 10; *see also* Assessment at 11 (Introductory Number 549-A "will intensify the risk of harm to both persons in custody and Department staff"). The Monitor speaks from decades of experience in corrections and with a mandate to assist New York City to improve safety conditions for persons in custody and staff. The assessment strengthens the Administration's view that the effects of Introductory Number 549-A would be dangerous.

Accordingly, I hereby disapprove Introductory Number 549-A.

Sincerely,

Eric Adams
Mayor

Cc: Hon. Adrianne Adams