



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: SUSANA ALCALA-
WOOD
City Attorney

SUBJECT: Temporary Moratorium on
Detention & Custodial
Facilities

DATE: September 10, 2026

REASON FOR SUPPLEMENTAL MEMO

During the Rules and Open Government Committee meeting on August 12, 2026, the Committee requested clarification on the approach of limiting the moratorium on the filing, acceptance, processing or approval of all applications for the establishment, expansion, or change of use for detention and custodial facilities only to private property versus all property including public property. This memorandum discusses at a high level the limitations on the City of San José ability to directly regulate public property owned by the state and federal government.

DISCUSSION

The proposed interim ordinance for a temporary moratorium is limited to private property because public properties are either within the City's existing authority as a proprietor, or outside of the City's ability to regulate under state and federal law.

For example, the City of San José recently adopted City Council Policy 7-15 prohibiting the use of City parking lots, open spaces, and garages for civil immigration enforcement purposes. In adopting the Policy, the City was acting as a proprietor and not regulator to prevent City owned and controlled facilities from being commandeered for civil immigration enforcement, and to prevent interference with how the City uses the property. The Policy did not prohibit the lawful use of City-owned and controlled property for other purposes unrelated to staging area, processing location, or operation base for civil immigration enforcement.

In the City's capacity as a regulator, the California Constitution grants cities broad police powers enact ordinances and regulations not in conflict with general laws to protect the health, safety, and welfare of its residents. *Cal. Const. art XI, § 7*. This includes local land use authority, an area where localities have been constitutionally endowed with wide-ranging discretion in how to best serve the general welfare. For this reason, the City could not regulate property owned by the state or its agencies when the state is

performing a governmental function. Similarly, the Supremacy Clause prevents states including its subdivisions (cities and counties) from directly regulating or discriminating against the federal government.

In balancing the above considerations, the proposed moratorium is generally applicable, and does not directly regulate or discriminate against property owned or operated by the state or federal government. The moratorium is not a ban but a legitimate exercise of the City's police power to pause and assess how potential detention and custodial facilities use on private properties may impact public health, safety and welfare, how these impacts should be mitigated, and where such facilities should be sited.