



Office of the City Attorney

ACTION CALENDAR
April 14, 2026

To: Honorable Members of the City Council
From: Farimah Brown, City Attorney (Author)
Subject: Proposed Resolution Limiting Use of City Property to Authorized Uses That Further City Purposes and Protect Access to City Services

RECOMMENDATION

Adopt a resolution limiting the use of City property to authorized uses that further City purposes and protect access to City services. This policy will ensure that City assets are not misappropriated in a manner that inhibits access to City services and interferes with City programs and other purposes.

BACKGROUND

On October 27, 2025, the Council directed the City Manager to identify City-owned and controlled properties, and to coordinate with the City Attorney to develop a policy or ordinance that would ensure City properties and facilities are only used for City purposes and those other purposes approved by the City Manager, or their designee, to ensure that City assets are not used in a manner that interferes with the City's own use and inhibits access to City services. The referral emphasized the need for the City to protect its limited resources, finding that the use of City property for federal immigration enforcement operations bases, staging or surveillance without permission would ignore the intended purposes of such assets, and interfere with the City's use of its own property.

Accordingly, the City Attorney's Office reviewed the City's existing ordinances and policies, the policies of comparable jurisdictions, and relevant legal developments to develop a draft resolution for review and potential adoption by the City Council. The City Attorney's Office also consulted with the Mayor to ensure alignment with desired policy outcomes and the City Manager to facilitate operationalizing the policy.

After conducting this review and consultation, the City Attorney's Office drafted a proposed resolution (Attachment 1). The proposed resolution ensures that City property is used only to advance or promote public programs or other purposes authorized by the City, and consistent with City purposes. Specifically, the resolution would prohibit the exclusive use of City property without the City's authorization, except for uses traditionally available to the public without such authorization. It would also prohibit any City official or employee from authorizing the use of City property if that use would disrupt City operations or discourage access to City services, unless the use furthers a City purpose, and declares that civil immigration enforcement is not a City purpose. In

effect, the resolution would restrict exclusive use of City property for certain non-City purposes, which include, but are not limited to, taking over City property for use in civil immigration enforcement.

Finally, the resolution would direct the City Manager to ensure that all non-access restricted City lots have clear signage designating that the property is owned or controlled by the City and cannot be used for any purpose not expressly authorized by the City.

RATIONALE FOR RECOMMENDATION

The City Attorney’s Office makes this recommendation at the request of the City Council per its referral on October 27, 2025.

FINANCIAL IMPLICATIONS

There may be modest costs associated with posting new signage.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects from taking this action.

CONTACT PERSON

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Attachments:

1. RESOLUTION NO. _____ –N.S. LIMITING USE OF CITY PROPERTY TO AUTHORIZED USES THAT FURTHER CITY PURPOSES AND PROTECT ACCESS TO CITY SERVICES

RESOLUTION NO. _____-N.S.

A RESOLUTION LIMITING USE OF CITY PROPERTY TO AUTHORIZED USES THAT FURTHER CITY PURPOSES AND PROTECT ACCESS TO CITY SERVICES

WHEREAS, the City of Berkeley’s (“Berkeley” or the “City”) mission is to provide quality service to our diverse community; promote an accessible, safe, healthy, environmentally sound, and culturally rich city; initiate innovative solutions; embrace respectful democratic participation; respond quickly and effectively to neighborhood and commercial concerns, and do so in a fiscally sound manner; and

WHEREAS, the City is committed to fostering an inclusive, safe, and equitable community for all residents, regardless of national origin or immigration status; and

WHEREAS, to further these goals, the City invests in and maintains substantial resources, including real and personal property, to administer public programs and services, such as health care, library services, emergency response, housing, public safety, economic development, and other essential municipal services; and

WHEREAS, the City’s facilities and other property are critical access points relied upon by all residents, and preserving their safety, accessibility, and operational continuity is a matter of practical necessity and fiscal responsibility; and

WHEREAS, the City has a compelling interest in preserving City resources for programs and services that further the City’s mission; and

WHEREAS, the City must ensure that all uses of City-owned and City-controlled property are authorized, used in a manner that furthers City purposes, and do not interfere with the City’s mission to serve its residents effectively and equitably; and

WHEREAS, the unauthorized appropriation of City property by non-City actors in ways that conflict with City purposes may undermine public trust, disrupt municipal operations, and discourage access to essential services; and

WHEREAS, in recent weeks and months, the City has observed the commandeering of local government-owned facilities for immigration enforcement across the country; and

WHEREAS, the City has long prohibited City officials from using City resources to assist in the enforcement of federal immigration laws, except in narrowly defined circumstances required by law; and

WHEREAS, if the City were to authorize the use of City property to conduct immigration enforcement, such enforcement would unquestionably interfere with the City's ability to use its own resources effectively and equitably provide programs and services to all residents. This conclusion is based on substantial evidence from major cities across the country demonstrating that recent surges in immigration enforcement activity discourage participation in the affairs of those cities, which disrupts municipal operations, creates public health and safety risks, and depresses commercial activity; and

WHEREAS, the unauthorized use of City property to assist in federal civil immigration enforcement does not further a City purpose and is inconsistent with the City's values and operational priorities; and

WHEREAS, access to non-public areas of City property by federal immigration authorities is already governed by the City's existing Sanctuary City Ordinance, which requires judicial authorization for such access; and

WHEREAS, the City has a strong interest in ensuring its policies concerning the use of its property are clear and unambiguous, including to prevent takeover of such property for federal civil immigration enforcement activity or for any other purpose not expressly authorized by the City and inconsistent with the City's own use of its limited discretionary resources; and

WHEREAS, the City does not interfere with or obstruct lawful immigration enforcement. Federal immigration enforcement officers currently carry out immigration enforcement in the City. The purpose of this policy is to preserve City resources for programs and services that further the City's mission and to ensure that the unauthorized use of City property does not undermine that mission by discouraging residents' participation in City's affairs.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley:

SECTION 1. Authorized Use of City Property

- A. As used herein, the use of City real or personal property shall mean the right to occupy or use the property, to the exclusion of others, and shall include but not be limited to uses that require a license, permit to enter, use permit, or other similar instrument. It shall not mean non-exclusive access or use of the City's property traditionally open and available to the public where that access or use is on the same terms as members of the public and does not infringe on the City's own use.
- B. No person or entity may use real or personal property owned or controlled by the City

of Berkeley (“City”), including by any City board or commission, unless such use advances or promotes public programs or other purposes authorized by the City and the City has authorized the use.

- C. No City department, officer, or employee shall authorize the use of City real or personal property if such use would disrupt City operations or discourage access to City services, unless the use furthers a City purpose.
- D. The use of City real or personal property to assist in federal civil immigration enforcement is a use that does not further a City purpose.
- E. The City Manager shall ensure that all City-owned or controlled parking lots, vacant lots, and parking garages that are not access restricted have clear signage designating that the property is owned and/or controlled by the City and cannot be used for any purpose not expressly authorized by the City.
- F. The City Manager shall oversee implementation and staff training regarding this policy in coordination with the City Attorney.
- G. Nothing in this Section shall be construed to interfere with or inhibit any exercise of the constitutionally protected rights of freedom of speech or assembly or to prevent the use of, or access to, City property as required by law.
- H. The examples provided herein are illustrative and not exhaustive; this policy applies equally to all proposed uses of City property that do not further City purposes, regardless of the identity of the user.
- I. This policy is not intended to and does not alter any existing City laws governing permitting or licensing of City property.

SECTION 2. No Conflict with Federal or State Law.

Nothing in this resolution shall be interpreted or applied to create any requirement, power, or duty in conflict with any federal or state law.

SECTION 3. No Conflict with Existing Property Interest or Agreements.

Nothing in this resolution shall be interpreted or applied to affect or interfere with any property interest or agreement, including but not limited to amendments to those agreements, deeds, easements, leases, licenses, or permits, to occupy or use City real or personal property that is entered into or effective before the effective date of this resolution.

SECTION 4. Severability

If any provision of this resolution is found invalid, the remaining provisions shall remain in full force and effect.

BE IT FURTHER RESOLVED, that this Resolution shall take effect immediately upon adoption.