

# Black Lives Matter as Government Speech

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# **Black Lives Matter as Government Speech**

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## I. Background

In June 2020, communities across California and the world protested and mourned the nationally recognized acts of violence against Black lives. #Say Their Names<sup>1</sup> compiled a long list of Black individuals that lost their lives in 2020 including Breonna Taylor, Ahmaud Arbery, and George Floyd.<sup>2</sup> A video of the Minneapolis police brutally killing George Floyd reached countless social media streams, sparking national protests across the country in solidarity with Black lives.

Many cities sought to show their support for Black lives through display of public art and in support of Black Lives Matter (BLM). The Mayor of Washington D.C., Muriel Bowser, commissioned a Black Lives Matter mural on 16th Street, and many cities followed suit. In the Bay Area, the city councils of Palo Alto, Petaluma, San Mateo, El Cerrito, and Half Moon Bay, to name a few, authorized murals on City streets and city-owned property.

These murals were not without controversy. Several of them were challenged on First Amendment grounds, specifically viewpoint discrimination. In Redwood City, the city removed their BLM mural after a local resident requested a sign reading “Make America Great Again.” She claimed that the mural’s location at the courthouse square constituted a public forum in which the public, regardless of belief, should be able to display messages. Likewise, in Washington DC, the conservative organization Judicial Watch filed suit after the city rejected its request to paint the Judicial Watch slogan. Judicial Watch claimed that in displaying a BLM mural on the street, the city effectively opened up the streets to become a public forum in which anyone can paint their message.

Other cities avoided publicized challenges, potentially insulating themselves with the government speech doctrine. This doctrine recognizes that the government may freely adopt and promote its *own* viewpoints without requiring it to accommodate private messages in the same medium.<sup>3</sup> The doctrine immunizes the government from claims that it has engaged in viewpoint discrimination, which the First Amendment broadly prohibits in contexts involving private speech. This paper examines the government speech doctrine in the context of displaying BLM murals, and provides some takeaways that may mitigate the risk of First Amendment challenges for cities that wish to engage in expressive activities.

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<sup>1</sup> #SAY THEIR NAMES, <https://sayevery.name/> (last visited Mar. 18, 2021)

<sup>2</sup> Bill Hutchinson, *From Eric Garner to George Floyd, 12 black lives lost in police encounters that stoked mass protests*, ABC NEWS (June 6, 2020), <https://abcnews.go.com/US/eric-garner-george-floyd-12-black-lives-lost/story?id=70999321>.

<sup>3</sup> See *Walker v. Texas Div., Sons of Confederate Veterans, Inc.* (2015) 576 U.S. 200, 207 (holding that “[w]hen government speaks, it is not barred by the Free Speech clause from determining the content of what it says”); *Rust v. Sullivan*, 500 U.S. 173, 193 (1991) (concluding that the government does not unconstitutionally engage in viewpoint discrimination where it “selectively fund[s] a program [that] it believes to be in the public interest”).

## II. Government Speech Doctrine

Government speech takes many forms ranging from placing public service ads on city buses, to conducting meetings of the city council, and even displaying murals. Likewise, cities may sponsor expressive programs in a variety of ways, including communicating their own public policy views, issuing a permit for a parade or street fair, or creating a designated or limited public forum for expressive activities.<sup>4</sup> The government speech doctrine allows cities to promote certain viewpoints without implicating the First Amendment.<sup>5</sup>

### A. Scope of the Doctrine

The Supreme Court has applied the government speech doctrine in two recent cases involving agency decisions to promote certain messages at the exclusion of others. In *Summum*, a government agency declined to place a private group's donated monument in a public park that contained multiple other donated monuments.<sup>6</sup> In *Walker*, a state agency operated a specialty license plate program and rejected a private group's proposed license plate design featuring a Confederate battle flag.<sup>7</sup> These government decisions led to lawsuits alleging that the agencies violated the First Amendment by engaging in content-based viewpoint discrimination.

In both cases, the Court held that the government speech doctrine shielded the agency's decision to reject messages from First Amendment challenges. The Court laid out three factors to determine whether an agency's expressive acts qualified as government speech:

- 1) Traditional use of a medium to convey government messages;
- 2) The public's reasonable understanding that the message conveyed represents the government's viewpoint; and
- 3) Government's direct control over the message conveyed.

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<sup>4</sup> Randy E. Riddle, *When Government Speaks: The Development of the Government Speech Doctrine*, LEAGUE OF CALIFORNIA CITIES, 1, (Sep. 19, 2013). Mr. Riddle's paper provides an excellent background of the history and development of the government speech doctrine. <https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2013/2013-Annual-Conference-City-Attorneys-Track/9-2013-Annual-Randy-Riddle-Free-Speech-Rights-at-C.aspx>

<sup>5</sup> *See id.* at 2 (discussing how the free speech clause does not regulate government speech and that the government may engage in viewpoint discrimination when the government itself is speaking).

<sup>6</sup> *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 465 (2009).

<sup>7</sup> *Walker v. Texas Div. Sons of Confederate Veterans, Inc.*, 555 U.S. at 206.

The Ninth Circuit has adopted the *Summum/Walker* framework in making government speech determinations.<sup>8</sup> Other courts have interpreted these factors as “relevant in identifying government speech,” but not rigidly necessary to a court’s government speech finding.<sup>9</sup>

*1. Examples agency action that qualified as government speech*

In *Summum*, the United States Supreme Court upheld Pleasant Grove City’s right to control the selection of monuments at a city park based on the government speech doctrine. First, as a matter of historic fact, governments had “long used monuments to speak to the public” since ancient times.<sup>10</sup> Second, public observers would reasonably interpret monuments as “conveying some message on the property owner’s behalf” because property owners are unlikely to “open up their property for installation of permanent monuments that convey a message with which they do not wish to be associated.”<sup>11</sup> When the government accepts and displays “privately financed and donated monuments” to the public on government land, those monuments effectively speak for the government.<sup>12</sup> Pleasant Grove City, which owned the park, did not want to display and therefore endorse the defendant’s religious message. Third, government bodies exercised selectivity when accepting privately funded or donated monuments by controlling the placement, content, design, and condition. Government decisionmakers select the monuments that in their view are “appropriate for the place in question, taking into account such content-based factors as esthetics, history, and local culture.”<sup>13</sup> Here, the City controlled the messages conveyed by the monuments in the Park by “exercising final approval authority over their selection.”<sup>14</sup> These findings convinced the Court that monument placement qualified as government speech.

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<sup>8</sup> See *Eagle Point Education Ass’n/SOBC/OEA v. Jackson County School District No. 9*, 880 F.3d 1097, 1102-04 (9th. Cir. 2018) (following the *Summum/Walker* framework in its discussion of government speech).

<sup>9</sup> See *Pulphus v. Ayers*, 249 F.Supp.3d 238, 247, 248, 254 (D.D.C. 2017) (extending the government speech doctrine to art displayed in a government building even after finding that analysis under the first *Summum/Walker* factor was inconclusive). In addition, the Eleventh Circuit in its holding in *Mech v. School Bd. of Palm Beach County*, de-emphasized the history prong of the *Walker* test, which reduced some of the burden on the government to demonstrate the expression was government speech. See Will Soper, *A Purpose-And-Effect Test to Limit the Expansion of the Government Speech Doctrine*, 90 U.CO.L.REV. 1237, 1257 (citing *Mech v. School Bd. of Palm Beach County*, in which the court found that there was not a long history of using school fences to display government messages, but concluded that such a finding was not strictly required in identifying government speech).

<sup>10</sup> *Summum*, 555 U.S at 470.

<sup>11</sup> *Id.* at 471.

<sup>12</sup> *Id.* at 470-71.

<sup>13</sup> *Id.* at 472.

<sup>14</sup> *Id.* at 473 (internal quotation marks omitted).

In *Walker*, the Supreme Court applied a similar analysis to specialty license plates.<sup>15</sup> First, history reveals that license plates have long “communicated messages from the States.”<sup>16</sup> Second, the public closely identified license plate designs with the issuing state.<sup>17</sup> The Court referred to the governmental nature of plates based on various features including how all plates are issued in Texas, how designs are owned by the issuing state, and how unused plates are disposed of.<sup>18</sup> As further evidence, the Court opined that drivers who used specialty license plates intended to highlight State endorsement, since a driver seeking to speak privately could convey the message on an adjacent bumper sticker.<sup>19</sup> Third, the State “maintained direct control over the messages conveyed” by retaining “sole control over the design, typeface, color” and other plate features, plus its authority and willingness to reject proposed designs.<sup>20</sup>

Several other cases since *Walker* have concluded that specialty license plates amount to government speech.<sup>21</sup> In *American Civil Liberties Union v. Tennyson*, the Fourth Circuit Court of Appeals initially held that the State’s offering of a “Choose Life” license plate in the absence of a pro-choice plate constituted viewpoint discrimination in violation of the First Amendment. However, in light of *Walker*, the court reversed, finding that the specialty license plates issued under North Carolina’s program amounted to government speech and therefore the state could

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<sup>15</sup> Since *Walker*, there have been two specialty license plate rulings in Virginia and North Carolina. Clay Calvert, *The Government Speech Doctrine in Walker’s Wake: Early Rifts and Reverberations on Free Speech, Viewpoint Discrimination, and Offensive Expression*, 25 WILLIAM & MARY BILL OF RIGHTS J. 1239, 1262 (2017). Both have resulted in similar bans of Confederate flag imagery and the rejection of a pro-choice plate despite a government-sanctioned pro-life option. *Id.*

<sup>16</sup> *Walker*, 576 U.S. at 210-11.

<sup>17</sup> *Id.* at 212.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 213.

<sup>21</sup> In *Commissioner of Indiana Bureau of Motor Vehicles v. Vawter*, the plaintiffs challenged Indiana’s Bureau of Motor Vehicles’ process for denying or revoking personal license plates (PLPs) violated the First Amendment. 45 N.E.3d 1200, 1203 (Ind. 2015). Applying the *Walker* factors, the court determined that license plates have “long been used for government purposes and the fact that PLPs are individually-crafted and unique does not extinguish the governmental nature of the message.” *Id.* at 1204, 1205. Furthermore, PLP alphanumeric combinations “are often closely identified in the public mind with the state.” *Id.* at 1205 (quoting *Walker*, 576 U.S. at 201). Lastly, the state maintains direct control over the alphanumeric combinations, which must be approved by the BMV. *Id.* at 1206. Given that Indiana’s PLP program met the three *Walker* factors, the Court concluded that the program constituted government speech. *Id.* at 1207.

reject license plate designs conveying messages it disagreed with.<sup>22</sup> However, even after *Walker*, other courts have reached the opposite result.<sup>23</sup>

## 2 Examples agency action that did not qualify as government speech

On the other hand, in *Hopper v. City of Pasco*, which pre-dates *Summum* and *Walker*, the Ninth Circuit held that the City of Pasco violated the artist's First Amendment rights when it refused to display certain "controversial" artwork in city hall.<sup>24</sup> The Ninth Circuit determined that Pasco had created a designated public forum because the City had opened up city hall to expressive activity by retaining the Arts Council to manage a gallery with exhibitions by local artists.<sup>25</sup> The Ninth Circuit further characterized the City of Pasco's non-controversy policy as "no policy" given the lack of any definite standards and consistent enforcement.<sup>26</sup> Before the exclusion of plaintiff's works, the city "neither pre-screened submitted works, nor exercised its asserted right to exclude works."<sup>27</sup> In fact, the city displayed controversial works despite complaints from citizens and employees.<sup>28</sup> Lastly, the city's decision to exclude plaintiff's work was unjustified by any compelling state interest.<sup>29</sup>

Several courts applying the *Walker* factors, concluded that vanity license plate programs did *not* qualify as government speech. In *Mitchell v. Maryland Motor Vehicle Administration*, the plaintiff applied for vanity plates bearing the characters "MIERDA," which the MVA approved and then rescinded several years later upon learning the meaning of the word.<sup>30</sup> The plaintiff

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<sup>22</sup> *American Civil Liberties Union v. Tennyson*, 815 F.3d 183, 184-85 (4th Cir. 2016).

<sup>23</sup> See Leslie Gielow Jacobs, *Government Identity Speech Programs: Understanding and Applying the New Walker Test*, 44 PEPPERDINE L.REV. 305, 332 (2017) (describing the two opposing conclusions of the Indiana Supreme Court and the Maryland Court of Appeals on whether vanity license plates constituted government speech).

<sup>24</sup> *Hopper v. City of Pasco*, 241 F.3d 1067, 1070 (9th Cir. 2001).

<sup>25</sup> *Id.* at 1078.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 1072.

<sup>29</sup> *Id.* at 1078.

<sup>30</sup> *Mitchell v. Maryland Motor Vehicle Admin.*, 450 Md. 282, 289-90 (Md. 2016). Similarly, in *Matwyuk v. Johnson*, the plaintiffs applied for vanity plates displaying INF1DL and "WAR SUX", which the Department of State denied because "the configuration might carry a connotation offensive to good taste and decency." 22 F. Supp. 3d 812, 816 (W.D. Mich. 2014). Plaintiffs claimed that these personalized messages on vanity plates constituted private speech whereas the government suggested they were government speech. *Id.* at 822. The court, applying the *Walker/Summum* factors, held that the personalized license plates at issue were not government speech because the individuals applying for the plates determine the message and each personalized plate is unique to the individuals (duplicates are prohibited). *Id.* at 823-24. (footnote continued on next page)

claimed that the message on the vanity license plate constituted private speech subject to strict scrutiny, while the state claimed that “MIERDA” was government speech.<sup>31</sup> Applying the *Walker* factors, the court concluded that the message on the vanity plate was private speech because vanity plates display “a personalized message with intrinsic meaning . . . that is independent of mere identification and specific to the owner.”<sup>32</sup> Private citizens, not the State, create and submit prospective vanity plate messages, which are personal to the vehicle owner.<sup>33</sup> Lastly, “the personal nature of a vanity plate message makes it unlikely that members of the public, upon seeing the vanity plate, will think the message comes from the State.”<sup>34</sup> Distinguishing from *Walker*, “vanity plates bear unique, personalized, user-created messages that cannot be attributed reasonably to the government.”<sup>35</sup> The court further stated that even though the message occurred on government property, a license plate, that does not automatically transform private speech into government speech.<sup>36</sup>

In *Matal v. Tam*, plaintiffs tried to register the band name “the Slants” with Patent & Trademark Office, which the government rejected for offensiveness.<sup>37</sup> Plaintiffs who identified as Asian American, claimed that the band was trying to reclaim the term and that the government’s rejection constituted a violation of the First Amendment.<sup>38</sup> The court rejected the government’s government speech defense because the government does not “dream up these marks or edit marks submitted for registration.”<sup>39</sup> Registration does not constitute approval of a mark.<sup>40</sup> Furthermore, trademarks have not been traditionally used to convey a government message.<sup>41</sup> Trademarks often contain expressive content and therefore are private speech.<sup>42</sup>

## **B. Application to Murals/Public Art**

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Therefore, messages on personalized license plates were protected under the First Amendment. *Id.* at 824.

<sup>31</sup> *Mitchell v. Maryland Motor Vehicle Admin.*, 450 Md. at 291.

<sup>32</sup> *Id.* at 293-94 (quoting *Mitchell v. Maryland Motor Vehicle Admin.*, 225 Md. App. 529, 561 (Md. Ct. Spec. App. 2015)).

<sup>33</sup> *Id.* at 294.

<sup>34</sup> *Id.* (quoting *Mitchell v. Maryland Motor Vehicle Admin.*, 225 Md. App. at 563).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 295.

<sup>37</sup> *Matal v. Tam*, 137 S.Ct. 1744, 1751 (2017).

<sup>38</sup> *Id.* at 1751, 1754.

<sup>39</sup> *Id.* at 1758.

<sup>40</sup> *Id.* at 1759.

<sup>41</sup> *Id.* at 1760.

<sup>42</sup> *Id.*



No Ninth Circuit or California Court has applied the *Summum/Walker* factors explicitly to murals. But other jurisdictions have declared murals or public art in government buildings as government speech. For example, in *Newton v. LePage*, the district court concluded that the mural displayed in Maine’s Department of Labor (MDOL) waiting room, which was subsequently removed, constituted government speech because the mural was to be permanently located in the MDOL, funded primarily by government sources, and monopolized wall space in the anteroom.<sup>43</sup> Furthermore, MDOL had “solicited submissions, set the overall theme, suggested ideas, provided an expert historian, tracked the artist’s progress, paid for the mural, exercised final approval authority, took ownership, retained many important ownership rights including the right of destruction, and eventually displayed the mural in its open-to-the public office.”<sup>44</sup>

In *Pulphus v. Ayers*, the court concluded that the art displayed in the Cannon Tunnel constituted government speech because House members played a significant role in the selection of the art as part of the competition and the Architect of the Capitol set rules about the size, medium, and content of the art.<sup>45</sup> The court further declared that public art constituted government speech but that the traditional medium factor was “inconclusive” given that the government failed to advance sufficient evidence of art competitions as a traditional medium for government messages.<sup>46</sup> The court also noted that when agencies locate art in a government building, the public is more likely to associate that art with a government message.<sup>47</sup>

### **C. Other Relevant factors to the government speech doctrine**

In applying this doctrine, the Supreme Court has found two other factors potentially relevant: (1) the location and duration of the government’s message, and (2) private participation in the craft and dissemination of government messages.

#### *1. Location and duration of government speech in traditional public forums*

When government speech takes place in a public forum, the analysis is complicated because the First Amendment “strictly limit[s] [governments] in their ability to regulate private speech in ... traditional public fora” like public streets and parks.<sup>48</sup> The Court conceded in *Summum* that in some situations it would be “difficult to tell whether a government entity is speaking on its own behalf or is providing a forum for private speech.”<sup>49</sup>

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<sup>43</sup>*Newton v. LePage*, 849 F. Supp. 2d 82, 120-21 (D. Maine 2012).

<sup>44</sup>*Id.* at 122.

<sup>45</sup>*Pulphus v. Ayers*, 249 F. Supp. 3d. 238, 252 (D.D.C 2017)

<sup>46</sup>*Id.* at 248.

<sup>47</sup>*Id.* at 249-50.

<sup>48</sup>*Summum*, 555 U.S. at 469.

<sup>49</sup>*Id.* at 470.

Private groups in *Summum* argued that the government’s rejection of its donated monument constituted impermissible viewpoint discrimination, since selected monuments were placed in a traditional public forum. After conceding that public parks were traditional public forums, the court rejected this analogy, reasoning that forum analysis applies only when public property is “capable of accommodating a large number of public speakers without defeating the essential function of the land.”<sup>50</sup> Here, public parks could “accommodate only a limited number of *permanent* monuments.”<sup>51</sup> Allowing any and all groups to express themselves through monuments would deprive the park of all qualities that made it a valuable forum. In contrast, mass speeches, demonstrators, and leaflet distributors exemplify transient speech that did not deplete the park of its forum character.<sup>52</sup>

*Walker* clarified that this permanency analysis applies only when government speech occurs in a traditional public forum. The analysis does not apply when the government spoke outside traditional public forums, such as through the design of specialty license plates. This is true even when the state could “theoretically offer a much larger number of license plate designs,” including designs intended to be available only temporarily.<sup>53</sup>

## 2. Assistance from private groups

The Supreme Court has held that the government does not lose its “freedom to express its views when it receives assistance from private sources for the purpose of delivering a government-controlled message.”<sup>54</sup> Thus, a private party may participate in the “design and propagation of a message” without “extinguish[ing] the governmental nature of the message or transform the government’s role into that of a mere forum-provider.”<sup>55</sup> For this reason, the donated monuments in *Summum* did not qualify as private speech even though they were privately financed.<sup>56</sup> Similarly, *Walker* held that a state agency’s speech retained its governmental nature even when “private parties propose designs that [the agency] may accept and display on its license plates.”<sup>57</sup>

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<sup>50</sup> *Id.* at 478.

<sup>51</sup> *Id.* (emphasis added).

<sup>52</sup> *Id.* at 249 (holding that “[a] public park ... can provide a soapbox for a very large number of orators ... but it is hard to imagine how a public park could be opened up for the installation of permanent monuments by every person or group wishing to engage in that form of expression”).

<sup>53</sup> *Walker*, 576 U.S. at 214.

<sup>54</sup> *Summum*, 555 U.S. at 468.

<sup>55</sup> *Walker*, 576 U.S. at 217.

<sup>56</sup> *Summum*, 555 U.S. at 471.

<sup>57</sup> *Walker*, 576 U.S. at 217.

### III. Case Studies

The government speech doctrine may help insulate cities from First Amendment challenges to city-sponsored murals such as those temporarily created in support of Black lives. In order to take advantage of this doctrine, cities should maintain tight control over the content of the message/expression and choose a location that cannot be construed as a public forum. Below are some examples of cities that adopted specific resolutions related to the government speech to minimize First Amendment concerns.

#### A. Flag Policies

Cities may receive requests from civic organizations or individual councilmembers to display the Pride Flag during Lesbian, Gay, Bisexual, Transgender (LGBT) Pride Month in June. Cities typically process these requests based on a flag policy that establishes clear guidelines for displaying flags at city facilities and declares that the City's flagpoles do not constitute a public forum. The display of commemorative and ceremonial flags are subject to council approval by resolution, serving as an expression of the City's official sentiments, i.e, government speech. Sample resolutions and flag policies from the City of Tracy and the City of Half Moon Bay are attached as **Exhibit A**.

#### B. Black Lives Matter Murals

During the summer of 2020, several cities authorized Black Lives Matter murals on city streets and other public property. Most of these cities authorized the mural via city council resolution,<sup>58</sup> which underscores that the mural is an expression of government speech. Sample resolutions are attached as **Exhibit B**. The city council resolutions contained some or all of the following common features:

- Authorized a temporary mural on public property, e.g., city street, public bike/pedestrian path, or city hall parking lot area;
- Included findings that the resolution was developed with input from Black community leaders;
- Stated that the mural reflects the City Council's viewpoint and is government speech;
- Solicited assistance from city arts commission/private groups/mural artists, but retained control and final approval authority over the content, size, location of the mural;
- Provided a stipend (if applicable) to community artists to cover paint and other materials;

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<sup>58</sup> *Resolution Authorizing Black Lives Matter Mural*, HALF MOON BAY CITY COUNCIL (Aug. 18, 2020); *Resolution of the City Council of the City of El Cerrito in Support of Black Lives Matter*, EL CERRITO CITY COUNCIL (July 2020); *Resolution of the Petaluma City Council Approving the Black Lives Matter Street Mural Project Sponsored by the Public Art Committee and funded by the Public Art Fund*, No.2020-110 (July 6, 2020); *Resolution of the Council of the City of Palo Alto Expressing Support of the Black Lives Matter Movement*, CITY OF PALO ALTO (June 8, 2020); *Resolution Declaring that Black Lives Matter, and Reaffirming the City of San Mateo's Commitment to Racial Equity*, CITY OF SAN MATEO (July 20, 2020).

- Found that the mural was consistent with City Council priorities and/or a prior resolution in support of Black Lives Matter; and
- Clarified that the resolution was not an endorsement of a political organization.

Most of these murals were installed between July and September 2021, and several remain as of the writing of this paper.

On the other hand, other cities received opposition to their murals and requests to install murals with different viewpoints. Redwood City removed its Black Lives Matter street mural adjacent to its Courthouse Square after giving an artist permission to paint the message.<sup>59</sup> The mural was removed after a resident requested permission to add “Make America Great Again” adjacent to the BLM mural.<sup>60</sup> The City explained that the mural had created potential for driver confusion and traffic accidents.<sup>61</sup> The City Council of Redwood City subsequently adopted a resolution in support of Black Lives Matter.<sup>62</sup> The resolution stated, among other things, the Council’s commitment to providing a temporary display of art related to the June 2, 2020 BLM protest as well as providing resources on racism for community learning.

In Washington DC, Black Lives Matter was painted along a two block stretch of 16th NW to show solidarity with the movement.<sup>63</sup> It is unclear whether the District adopted a resolution or other policy statement before authorizing the mural. In response to the mural, conservative legal advocacy group, Judicial Watch requested a permit to paint its slogan “Because No One is Above the Law!” on a city street.<sup>64</sup> The city denied the permit and Judicial Watch sued claiming a violation of the First Amendment.<sup>65</sup> The lawsuit sparked debate over whether the painting of

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<sup>59</sup> Mario Koran, *California city removes Black Lives Matter mural after request to add pro-trump art*, THE GUARDIAN (July 22, 2020), <https://www.theguardian.com/us-news/2020/jul/22/redwood-city-black-lives-matter-mural-maga>.

<sup>60</sup> *Id.*

<sup>61</sup> Kristi Sturgill, *Redwood City washes away Black Lives Matter street art after resident proposes a MAGA one too*, LOS ANGELES TIMES (July 22, 2020), <https://www.latimes.com/california/story/2020-07-22/redwood-city-black-lives-matter-mural-maga>.

<sup>62</sup> *Resolution Declaring that Black Lives Matter and Reaffirming the City of Redwood City’s Commitment to Racial Equity*, CITY COUNCIL OF REDWOOD CITY (Aug. 10, 2020), <https://webapps.redwoodcity.org/files/finance/main/Res20-15877.pdf>.

<sup>63</sup> Martin Austermuhle, *Bowser Had ‘Black Lives Matter’ painted on a D.C. Street. Now Other Groups Want a Turn*, NPR (Aug. 6, 2020), <https://www.npr.org/local/305/2020/08/06/899737397/bowser-had-black-lives-matter-painted-on-a-d-c-street-now-other-groups-want-a-turn>.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

murals on the streets creates a public forum in which anyone can paint their message.<sup>66</sup> Amidst several legal challenges, the mural itself has not been removed as of the writing of this paper.

#### **IV. Conclusion and Takeaways**

Cities can mitigate the risk of First Amendment challenges under the government speech doctrine when the city has direct control over the message conveyed and chooses a location that cannot be construed as a public forum. These requirements may be met in the following ways:

- 1) Adopt a resolution that provides clear guidelines on the expressive action such as displaying ceremonial flags or commemorative murals.
- 2) Select a location on public property and clearly state that the selected location does not constitute a public forum. If feasible, select a location where the city has previously engaged in government speech.
- 3) State that the expressive action reflects the views of the city council.
- 4) Do not engage in expressive action based solely on request from a third party and do not sponsor expression of a third party.

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<sup>66</sup> *Id.*

**EXHIBIT**

**A**

RESOLUTION 2019-\_\_\_\_\_

AUTHORIZING THE DISPLAY OF THE LGBT PRIDE FLAG ON JUNE 28, 2019 AT CITY HALL  
TO COMMEMORATE THE 50<sup>TH</sup> ANNIVERSARY OF THE STONEWALL REBELLION AND  
LGBT PRIDE MONTH

WHEREAS, The City Council of the City of Tracy wishes to commemorate to the 50<sup>th</sup> anniversary of the Stonewall Riots or Stonewall Rebellion which inspired the movement for Lesbian, Gay, Bisexual, and Transgender (LGBT) civil rights in the United States, and

WHEREAS, The display of the LGBT Pride Flag, as known as the Rainbow Flag, serves to express the City's official commemoration of this important event in U.S. history and its commitment to celebrating diversity, and

WHEREAS, The City's flagpoles are not intended to be a forum for free expression by the public, and

WHEREAS, The LGBT Pride Flag will be flown on June 28, 2019 at City Hall in lieu of the City's flag.

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of Tracy hereby authorizes the display of the Pride Flag on the City flagpole located in front of City Hall on June 28, 2019 to commemorate the 50<sup>th</sup> anniversary of the Stonewall Riots and LGBT Pride month.

\* \* \* \* \*

The foregoing Resolution 2019-\_\_\_\_\_ was adopted by the City Council on the 4<sup>th</sup> day of June, 2019, by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

RESOLUTION 2019-\_\_\_\_\_

APPROVING A COUNCIL POLICY REGARDING THE DISPLAY OF FLAGS AT CITY  
FACILITIES

WHEREAS, The City of Tracy displays and handles all flags in accordance with Federal and State Law, and

WHEREAS, The City does not have local rules or guidelines regarding the display of flags at City facilities, and

WHEREAS, The City wishes to adopt a policy to provide clear guidelines about the display of flags at City facilities that declares that the City's flagpoles are not intended to be a forum for free expression by the public.

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of Tracy hereby adopts the policy for the display of flags at City Hall contained in Exhibit A.

The foregoing Resolution 2019-\_\_\_\_\_ was adopted by the City Council on the 18<sup>th</sup> day of June, 2019, by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK



Exhibit "A" to Resolution 2019-\_\_\_\_\_  
POLICY FOR THE DISPLAY OF FLAGS AT CITY FACILITIES

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SECTION 1:            PURPOSE

The purpose of this policy is to establish clear guidelines regarding the display of the flags at City facilities.

SECTION 2:            POLICY

2.1     Conformance with Federal and State Flag Regulations. Flags shall be displayed in accordance with federal and state regulations, including Title 4, Chapter 1 of the United States Code, and Sections 430 through 439 of the California Government Code.

2.2     The City Manager is authorized to order that the City flag be lowered to half-staff in honor of a City employee killed in the line of duty.

2.3     Ceremonial or Commemorative Flags.

2.3.1 Non-Public Forum. The City's flagpoles are not intended to be a forum for free expression by the public. Ceremonial or commemorative flags shall be displayed as an expression of the City's official sentiments and authorized by a resolution of the City Council.

2.3.2. Commemorative flags shall only be displayed at City Hall and on the flagpole designated to display the City's flag.

2.3.3 Commemorative flags shall be displayed for a period of time authorized by resolution of the City Council.

2.3.4 The City will not display a commemorative or ceremonial flag based on a request from a third party, nor will the City use its flagpoles to sponsor the expression of a third party.

2.4     Implementation of Policy. The Public Works Director is responsible for ensuring the proper implementation of this Policy. The Public Works Director is further authorized to develop standard operating procedures consistent with this Policy.

**RESOLUTION NO. C-2020-\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HALF MOON BAY  
APPROVING A COUNCIL POLICY REGARDING THE DISPLAY OF FLAGS AT CITY FACILITIES**

**WHEREAS**, the City of Half Moon Bay displays and handles all flags in accordance with federal and state Law, and

**WHEREAS**, the City does not have local rules or guidelines regarding the display of ceremonial flags at City facilities, and

**WHEREAS**, the City wishes to adopt a policy to provide clear guidelines about the display of flags at City facilities that declares that the City's flagpoles are not intended to be a forum for free expression by the public.

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Half Moon Bay hereby adopts the policy for the display of flags at City Hall contained in Exhibit A.

\*\*\*\*\*

I, the undersigned, hereby certify that the foregoing Resolution was duly passed and adopted on the 19th day of May 2020 by the City Council of Half Moon Bay by the following vote:

AYES, Councilmembers:

NOES, Councilmembers:

ABSENT, Councilmembers:

ABSTAIN, Councilmembers:

ATTEST:

APPROVED:

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Jessica Blair, City Clerk

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Adam Eisen, Mayor

## **EXHIBIT A – POLICY FOR THE DISPLAY OF FLAGS AT CITY FACILITIES**

### **SECTION 1: PURPOSE**

The purpose of this policy is to establish clear guidelines regarding the display of the flags at City facilities.

### **SECTION 2: POLICY**

2.1 Conformance with federal and state Flag Regulations. Flags shall be displayed in accordance with federal and state regulations, including Title 4, Chapter 1 of the United States Code, and Sections 430 through 439 of the California Government Code.

2.2 The City Manager is authorized to order that the City flag be lowered to half-staff in honor of a City / County employee killed in the line of duty.

2.3 Ceremonial or Commemorative Flags.

2.3.1 Non-Public Forum. The City's flagpoles are not intended to be a forum for free expression by the public. Ceremonial or commemorative flags shall be displayed as an expression of the City's official sentiments and authorized by a resolution of the City Council.

2.3.2. Commemorative flags shall only be displayed at City Hall and on the flagpole designated to display the City's flag.

2.3.3 Commemorative flags shall be displayed for a period of time authorized by resolution of the City Council.

2.3.4 The City will not display a commemorative or ceremonial flag based on a request from a third party, unless approved by Council resolution, nor will the City use its flagpoles to sponsor the expression of a third party.

RESOLUTION NO. C-2020-\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HALF MOON BAY AUTHORIZING THE  
DISPLAY OF THE LGBTQ FLAG FOR THE MONTH OF JUNE 2020 AT CITY HALL TO  
COMMERORATE LGBTQ PRIDE MONTH**

**WHEREAS**, the City Council of the City of Half Moon Bay wishes to express our support for Pride Month and the Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) community in the United States, and

**WHEREAS**, the display of the LGBTQ Pride Flag, also known as the Rainbow Flag, serves to express the City's official commemoration of this important event in U.S. history and its commitment to celebrating diversity, and

**WHEREAS**, the City's flagpoles are not intended to be a forum for free expression by the public, and

**WHEREAS**, the LGBTQ Pride Flag will be flown for the month of June 2020 at City Hall.

**NOW, THEREFORE BE IT RESOLVED**, that the City Council of the City of Half Moon Bay hereby authorizes the display of the Pride Flag on the City flagpole located in front of City Hall for the month of June 2020 to celebrate and honor LGBTQ Pride month.

\*\*\*\*\*

I, the undersigned, hereby certify that the foregoing Resolution was duly passed and adopted on the 19th day of May 2020 by the City Council of Half Moon Bay by the following vote:

AYES, Councilmembers:

NOES, Councilmembers:

ABSENT, Councilmembers:

ABSTAIN, Councilmembers:

ATTEST:

APPROVED:

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Jessica Blair, City Clerk

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Adam Eisen, Mayor

# **EXHIBIT**

## **B**

**RESOLUTION NO. C-2020-\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HALF MOON BAY  
IN SUPPORT OF BLACK LIVES MATTER**

**WHEREAS**, the City Council of Half Moon Bay joins our residents and neighbors in affirming that Black Lives Matter. The City Council is appalled by the murders of George Floyd, Ahmaud Arbery, Jordan Edwards, Akai Gurley, Botham Jean, Atatiana Jefferson, Elijah McClain, Jean Pedro Pierre, Tamir Rice, Walter Scott, Breonna Taylor, and countless more; and

**WHEREAS**, the systemic killing of Black men, women, and children by police are unacceptable violations of human rights and a betrayal of the ideals to which our community and country aspire; and

**WHEREAS**, the City Council fully supports, and stands in solidarity with, the protests against police brutality and racial injustice that have taken place both in our community and across the nation and globe; and

**WHEREAS**, the City Council values the richness and strength that come from fostering a diverse, inclusive, and welcoming community for people of all races and socioeconomic backgrounds, including those who live, work, and visit Half Moon Bay; and

**WHEREAS**, public art provides a vehicle for community engagement and the expression of community values; and

**WHEREAS**, the City Council seeks to honor Black Lives Matter through the installation of a public mural in the City Hall parking lot as an expression of the City Council's support for Black lives, systemic change, and racial justice.

**NOW, THEREFORE, BE IT RESOLVED**, that Black lives matter and that the City Council forever stands against racism, discrimination, and police violence. The City Council commits to act and encourage community action towards eliminating racial disparities in both the government and the community.

**BE IT FURTHER RESOLVED**, that the City recognizes that realizing racial justice and equity in our community will take long-term commitment, and that the City Council pledges itself to this ongoing work.

**BE IT FURTHER RESOLVED**, that the City Council hereby authorizes the installation of a temporary mural in the City Hall parking lot as an expression of the City Council’s support of Black Lives Matter and visions of a more just and equitable society.\*

**BE IT FURTHER RESOLVED**, that the City may seek assistance from private groups and artists in the design and production of the mural, but will retain full and final authority over its content.

\*This resolution is not an endorsement of the political organization “Black Lives Matter Global Network Foundation”

\*\*\*\*\*

I, the undersigned, hereby certify that the foregoing Resolution was duly passed and adopted on the 18th day of August 2020 by the City Council of Half Moon Bay by the following vote:

AYES, Councilmembers:

NOES, Councilmembers:

ABSENT, Councilmembers:

ABSTAIN, Councilmembers:

ATTEST:

APPROVED:

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Jessica Blair, City Clerk

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Adam Eisen, Mayor

1279550.1

RESOLUTION 2020-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO IN SUPPORT  
OF BLACK LIVES MATTER

WHEREAS, The City Council of the City of El Cerrito joins our residents and neighbors in affirming that Black Lives Matter. The City is appalled by the unjust death of George Floyd and other Black men, women, and children at the hands of law enforcement and recognize our duty to take action locally; and

WHEREAS, the killing of Black men and women, including queer and trans persons of color, is an unacceptable violation of the human rights due to all people; and

WHEREAS, in 2016, the City of El Cerrito, through the Human Relations Commission, adopted the “Stop Hate. Together. Not In Our Town” campaign in response to a hate crime was committed against a family in our city; and

WHEREAS, on July 1, 2020, the El Cerrito Police Department held a town hall on policing and received several recommendations for improving policing in our city; and

WHEREAS, on July 1, 2020, the El Cerrito Environmental Quality Committee and Human Relations Commission met jointly to express their commitment to seek community input and develop an environmental, social, and racial framework to inform their work in the future; and

WHEREAS, Councilmembers have participated in, and fully support, all of the moving protest events that have taken place in our community over the last few weeks. The City appreciates the significance and impact of the large attendance at these peaceful events; and

WHEREAS, El Cerrito residents have historically supported working towards a diverse, inclusive, and welcoming community for people of all racial and socioeconomic backgrounds, including all those who live, work, attend school and visit El Cerrito. The City Council acknowledges and thanks community members for sharing their thoughts, input, and ideas to help develop both immediate and longer-term action plans to achieve this more inclusive vision. This resolution is only the first steps in our commitment to achieving this vision; and

WHEREAS, a youth organization, including students from El Cerrito High School, approached the City to honor the Black Lives Matter movement and the City Council desires to authorize the installation of a public mural on the Ohlone Greenway as an expression of the City.

NOW THEREFORE, BE IT RESOLVED by the City of El Cerrito City Council that racism, discrimination, and police violence will never be tolerated in El Cerrito. The City Council commits to act and encourage community action towards eliminating racial



disparities, both inside government and in the community. The City recognizes that there is ongoing work to be done and are committed for the long-term.

BE IT FURTHER RESOLVED that the Human Relations Commission shall consider various community opportunities for listening and working with the community to further the Black Lives Matter movement.

BE IT FURTHER RESOLVED that the City Council hereby authorizes the installation of a public mural message on the Ohlone Greenway as an expression of the City Council support to honor the Black Lives Matter movement.

BE IT FURTHER RESOLVED that this resolution shall become effective immediately upon passage and adoption.

I CERTIFY that at a regular meeting on July 21, 2020 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on July \_\_\_\_\_, 2020.

\_\_\_\_\_  
Holly M. Charléty, City Clerk

APPROVED:

\_\_\_\_\_  
Gregory B. Lyman, Mayor

# Resolution No. 2020-110 N.C.S. of the City of Petaluma, California

## **RESOLUTION OF THE PETALUMA CITY COUNCIL APPROVING THE BLACK LIVES MATTER STREET MURAL PROJECT SPONSORED BY THE PUBLIC ART COMMITTEE AND FUNDED BY THE PUBLIC ART FUND**

**WHEREAS**, in response to the killing of George Floyd, protests have occurred throughout the country and the world, with continuing demonstrations thematizing issues of racism, inequality, and police practices; and

**WHEREAS**, the Black Lives Matter movement has become a symbol of protest and call to action against racial inequality across America; and,

**WHEREAS**, community protests and expression has been at the forefront of the national dialogue regarding systemic racism, oppression, and injustice in recent weeks; and,

**WHEREAS**, public art, whether organic or organized, provides a vehicle for community engagement and expression; and,

**WHEREAS**, Black Lives Matter street murals have been created in jurisdictions across the United states, including Charlotte, Austin, Seattle, Palo Alto, and Washington D.C.; and,

**WHEREAS**, in Petaluma, community members have taken part in rallies, protests, public meetings, sent messages to local leaders and generally engaged in political speech and expressive activity calling for reforms and decrying racism and unequal treatment of members of minority groups and in particular black people; and

**WHEREAS**, community expression at Leghorns Park illustrates the Petaluma community's desire to find ways for peaceful protect and dialogue about racial injustice; and

**WHEREAS**, public art creates a community based outlet for community expression; and,

**WHEREAS**, the Petaluma Public Art Committee at their June 25, 2020 regular meeting unanimously supported the creation of a Black Lives Matter street mural project; and,

**WHEREAS**, at the June 25, 2020 Public Art Committee meeting public comment was received and voices support of the City sponsoring a Black Lives Matter street mural project; and,

**WHEREAS**, the City Council discussed the item, including the recommendation from the Public Art Committee and the community's input at their July 6, 2020 regular meeting; and,

**WHEREAS**, the Black Lives Mural project is consistent with the City's Goals and Priorities for 2019-2021 in that the project is a community oriented public art project that includes a temporary mural installation; and,

**WHEREAS**, the project was reviewed consistent with the California Environmental Quality Act Guidelines and found categorically exempt pursuant to Section 15301 (existing facilities) in that it is a temporary mural painted on an existing public street; and,

**WHEREAS**, members of the public had the opportunity to provide public comment at the July 6, 2020 meeting.

**NOW THEREFORE BE IT RESOLVED** that the Petaluma City Council approves the Black Lives Matter street mural project sponsored by the Public Art Committee and funded by the Public Art Fund, including the following:

1. The City Council authorizes the City Manager to place the words "Black Lives Matter" on a City street (or streets) with exact location to be determined in concert with the Public Art Committee and consideration of the relationship with other street markings intended for traffic control.
2. The City Council authorizes the City Manager to work with the Public Art Committee to finalize specific details for release of a Call to Artists as previously discussed by the Public Art Committee at their June 25, 2020 meeting, as discussed in the City Council's July 6, 2020 staff report on the item, and using Palo Alto's Black Lives Matter program as a template.
3. The City Council encourages an efficient timeline to ensure implementation quickly and encourages community engagement to support and encourage community expression and healing in light of the current national climate.
4. The City Council approves funding of up to \$15,000 for implementation of the program from the public art fund and consistent with allocation for the fiscal year 2020-2021 budget.
5. The City Council encourages artist selection that represent black artists and artists of color and include artists local to Petaluma or Sonoma County.

Under the power and authority conferred upon this Council by the Charter of said City.

**REFERENCE:**

I hereby certify the foregoing Resolution was introduced and adopted by the Council of the City of Petaluma at a Regular meeting on the 6<sup>th</sup> day of July 2020, by the following vote:

Approved as to form:



City Attorney

**AYES:**

Mayor Barrett; Vice Mayor Fischer; Healy; Kearney; King; McDonnell; Miller

**NOES:**

None

**ABSENT:**

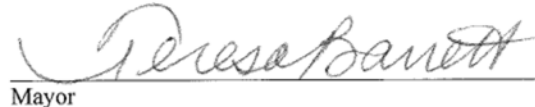
None

**ABSTAIN:**

None

**ATTEST:**

  
City Clerk

  
Mayor



# City of Palo Alto

## City Council Staff Report

(ID # 11414)

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**Report Type:** Action Items

**Meeting Date:** 6/8/2020

**Summary Title:** Resolution Supporting Black Lives Matter Movement

**Title:** Adoption of a Resolution of the Council of the City of Palo Alto Expressing Support of the Black Lives Matter Movement

**From:** City Manager

**Lead Department:** City Manager

Attached is a resolution for Council's consideration and adoption.

**Attachments:**

- Attachment A: Black Lives Matter Resolution



# Resolution

## PROCLAIMING BLACK LIVES MATTER

**WHEREAS**, the inhumane murder of George Floyd in Minneapolis on May 25, 2020 by officers of that city's Police Department breaks our hearts and breaks the promise of this country, which is that all people are created equal. Our nation is understandably outraged, scared, and worried; and

**WHEREAS**, as your city government, we have an obligation to protect and serve everyone, no matter who they are or where they come from. At this moment of reckoning, we are called upon to listen and to speak, to kneel and to stand, to reflect and to improve; and

**WHEREAS**, we deeply appreciate the dedicated women and men of our police force who work, day and night, to keep our community safe. At the same time, the tremendous power of our police officers must always be balanced with the tremendous responsibility they have. We will recommit to a shared understanding of how we treat the members of our community -- who gets the benefit of the doubt and who gets pulled over, who gets let off with a warning and who is injured or killed. Our community is not immune to nor exempt from this soul-searching work; and

**WHEREAS**, the City of Palo Alto commits to the affirmation that Black lives matter because so many black and brown lives have for so long been discounted, undervalued, abused, and taken from us. We cannot and will not accept this here in our city, and here in our country.

**NOW, THEREFORE, BE IT RESOLVED** that the Council of the City Palo Alto does hereby express its support and proclamation that Black lives matter, and commits our local government to do everything within our powers to review our police and public safety practices with the community and then implement measures that reflect no tolerance for police violence, prejudice, discrimination, and harm.

INTRODUCED AND PASSED: June 8, 2020

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
City Attorney



## **City of Palo Alto**

### **City Council Staff Report**

**(ID # 11454)**

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**Report Type: Consent Calendar**

**Meeting Date: 6/23/2020**

**Summary Title: Place Black Lives Matter on a City Street Near City Hall**

**Title: Authorize the City Manager to Place "Black Lives Matter" on a City Street Near Palo Alto City Hall**

**From: City Manager**

**Lead Department: Community Services**

#### **Recommendation**

Staff recommends City Council adopt the following motion:

1. In solidarity with the Mayor of Washington, D.C. and the Black Lives Matter movement, joining other cities around the country, authorize the City Manager to place the words "Black Lives Matter" on a City street (or streets) near Palo Alto City Hall as soon as practicable.
2. The City Manager is authorized to approve a specific design and location in consultation with the Public Art Commission and the community and in conformance with Council's direction above. The City Manager will also consider the relationship with other street markings intended for traffic control.

#### **Background and Discussion**

On June 15, 2020, the City Council directed the Public Art Commission to explore public art honoring diversity, and work with the community to paint "Black Lives Matter" or a similar message near City Hall, as soon as possible.

Staff returns to Council with the recommended motion above to authorize the painting on a street or streets in front of or near City Hall. This action confirms the City Council's direction to waive technical and process requirements as needed to affect changes to public streets, protect the City from liability, and expedite this effort. The Public Art Commission will work with staff to find and select artists to develop the "Black Lives Matter" design and for the City Manager's final approval. In reviewing the design and placement, the Public Art Commission and City Manager will take care to consider existing street markings, such as lane markings and pedestrian crossings.

**Timeline**

If City Council approves of the recommended motion, staff will work with the PAC to outreach to artists and invite design proposals. PAC will review the designs and make a recommendation to the City Manager for final approval. Once a final concept is approved, it is envisioned that actual painting will occur on one day to prevent prolonged road closures.

**Resource Impact**

The Fiscal Year (FY) 2021 Proposed Budget, which is still subject to City Council approval on June 22, 2020, includes sufficient funding to support anticipated expenses of this project. The project will be funded in compliance with existing Public Art policies. The Public Art Commission will make a recommendation on number of artists and locations, which will determine the project budget, estimated by staff to range from \$10,000 to \$15,000. The Police and Public Works Departments will assist with necessary road closures, expected to be no more than two days.

**Stakeholder Engagement**

A petition letter signed by over 1,000 individuals in support of painting Black Lives Matter on Hamilton Avenue in front of City Hall was sent to City Council earlier this month. As discussed above, the process will involve community involvement and outreach to artists and selection of the artists through the Public Art Commission.

**Environmental Review**

The subject project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the City's environmental regulations. Specifically, the City, acting as the Lead Agency, finds this project exempt from CEQA in accordance with CEQA Guidelines Section 15301 (Existing Facilities).

**CITY OF SAN MATEO**  
**RESOLUTION NO. \_\_\_\_ (2020)**

**RESOLUTION DECLARING THAT BLACK LIVES MATTER, AND REAFFIRMING THE CITY OF SAN MATEO'S  
COMMITMENT TO RACIAL EQUITY**

WHEREAS, as our Country contends with the consequences of 400 years of systemic violence and abuse towards Black people and Black communities; and

WHEREAS, the City Council acknowledges that police brutality and racial violence against Black people tragically continues within the United States as evidenced by the murders of George Floyd, Atatiana Jefferson, Jordan Edwards, Tamir Rice, Jean Pedro Pierre, Ahmaud Arbery, Breonna Taylor, Botham Jean, Walter Scott, Akai Gurley and many more; and

WHEREAS, people of color have been historically disadvantaged by structural racism and racial inequity continues to exist in the City of San Mateo; and

WHEREAS, the City Council acknowledges that Black lives matter and we stand in solidarity with communities of color, and the hundreds of city residents who exercised their right to peacefully protest against racism and police brutality in the last few weeks; and

WHEREAS, the City Council affirms the inherent dignity of all of our community members and we hold ourselves, our institutions and our government to the highest possible standards of equity and justice; and

WHEREAS, City Hall should be a place that builds understanding and actively engages our diverse community in creating pathways to freedom and justice for all people; and

WHEREAS, the City Council co-authored this resolution in partnership with our Black leaders because allyship starts with listening to affected community members and uplifting underrepresented voices; and

WHEREAS, the City Council is committed to working in coalition with our local Black institutions including St. James A.M.E. Zion Church, Trinity Baptist Church, Macedonia Church of God and Christ, Second Baptist Church, Bay Area Community Health Advisory Council, North Central Neighborhood Association, and the NAACP San Mateo Chapter, and community stakeholders to support reflection, dialogue, learning, and action to eradicate institutionalized racism and inequity; and

WHEREAS, the foundation for community-led change starts with our own openness to transformation, and a commitment to an inclusive and methodical process of learning and analysis; and

WHEREAS, this resolution reflects the efforts of the following co-authors:

Claire Mack, Former Mayor City of San Mateo

Amourance Lee, San Mateo City Council Member

Lisa Tealer, Executive Director of Bay Area Community Health Advisory Council

Reverend Dr. Marlyn Bussey, Pastor, St. James AME Zion Church, San Mateo

Reverend Lorrie Owens, President of NAACP San Mateo Chapter

Rory McMilton, President of City of San Mateo Police Officers' Association and Police Chief Ed Barberini



and supporters:

Darren Kelley, Board Chair of San Mateo Police Activities League

Ethel Batiste, President North Central Neighborhood Association

Reverend Sydney Webster, Senior Pastor of Trinity Baptist Church

Leon Swindell, Pastor of Macedonia Church of God in Christ

Rosa L. Simpson, Pastor of Second Baptist Church of San Mateo

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN MATEO, CALIFORNIA, HEREBY DECLARES that Black lives matter and will work to continue to address the root causes of racial inequity in our community by using an anti-racist, racial equity focused lens to assess current and future policies, processes, practices and programs.\*

\*This resolution is not an endorsement of the political organization "Black Lives Matter Global Network Foundation".