



Legislation Text

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City of Alexandria, Virginia

MEMORANDUM

DATE: OCTOBER 18, 2022

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

THROUGH: JAMES F. PARAJON, CITY MANAGER /s/

FROM: JEREMY MCPIKE, DIRECTOR, DEPARTMENT OF GENERAL SERVICES

DOCKET TITLE:

Consideration of a Resolution to Adopt a City Flag/Flagpole Policy.[ROLL-CALL VOTE]

ISSUE: Policy regarding the use of City flag poles or other flag-flying locations owned by the City for official governmental speech; such flagpoles or other flag-flying locations owned by the City are expressly reserved for the City and not intended to be a public forum.

RECOMMENDATION: That City Council approve the attached resolution for the use of City flagpoles or other flag-flying locations owned by the City for official governmental speech.

BACKGROUND: On May 2, 2022, the Supreme Court of the United States held, in *Shurtleff v. Boston*, that the City of Boston, Massachusetts violated the Free Speech Clause of the First Amendment by barring a religious group from flying the Christian flag on a flagpole outside of Boston's city hall. Boston has three flagpoles near its city hall that generally display the flags of the United States of America, the Commonwealth of Massachusetts, and the City of Boston. On occasion, the City allows private parties to request permission to briefly display other flags on the third flagpole, usually in conjunction with events organized by those parties. Over a period of 12 years (2005 to 2017), the City of Boston did not deny any of the 284 requests made by private parties to display about 50 unique flags. However, when a religious group applied to display the Christian flag, the City denied its application citing concerns that displaying a flag called "the Christian flag" would violate the First Amendment's Establishment Clause by signaling that the City was endorsing a particular religion. At the time, Boston did not have a written policy regarding the use of the flagpole.

The religious group sued, alleging that Boston violated the group's First Amendment free speech rights when it barred the group from flying a flag based solely on the content of the flag. The Supreme Court held that while flags flying outside of Boston's city hall usually convey the city's speech, because Boston (1) allowed private

entities to use the flagpole in front of City Hall, but did not actively control the flag raising nor shape the messages the flags sent, and (2) did not have a written policy on what flags groups could fly and what flags could communicate, Boston effectively turned the third flagpole into a designated public forum, and as such could not discriminate based on the speech or expression offered in that public forum.

DISCUSSION: The *Shurtleff* case was largely decided on 1) Boston's lack of editorial control over flags flown on its third flagpole, and 2) that Boston did not have a written policy on who may fly flags, what may be on them, nor how to decide which flags could be flown. In response to the *Shurtleff* decision, staff drafted a resolution for the use of City flagpoles or other flag-flying locations owned by the City for City Council's review and consideration, including a statement that any expressive content on City flagpoles or other flag-flying locations owned by the City are expressions of the City itself, and that the City's flagpoles and other flag-flying locations owned by the City are not intended as a public forum. The resolution also defines which flags may be flown by the City on City-owned property. The resolution will help ensure that any such expression is properly understood as official governmental speech protected by the First Amendment and minimize the risk that a court finds the City's flagpoles or other flag-flying locations owned by the City a public forum. The resolution further directs the City Manager to adopt a policy consistent with the resolution itself.

FISCAL IMPACT: There is no direct fiscal impact to implement this policy.

ATTACHMENT: Resolution

STAFF:

Emily A. Baker, Deputy City Manager

Joanna Anderson, City Attorney

Jeremy McPike, Director, Department of General Services

Shawn Lassiter, Assistant City Attorney

Alfred Coleman, Deputy Director, Department of General Services