

CITY OF BARRE
PUBLIC BODY DRAFT MEETING MINUTES

Committee/board: Diversity and Equity Committee

Date of meeting: Monday, October 19, 2020, 6:15 PM

Location of meeting: Zoom Videoconference with Call-in Option

Board/committee members in attendance:

- Ellen Kaye
- Danielle Owczarski
- William Toborg
- Joelen Mulvaney
- Marichel Vaught
- Christopher Roberts

Others in attendance:

- Steve Mackenzie (City Manager)
- Jacob Hemmerick (City Council)

Topic(s) Discussed

1. Call to order at 6:18 PM.
2. Adjustments to the Agenda
 - a. No adjustments
3. Approval of Minutes from Previous Meeting
 - a. Approved - moved definitions committee information under committees
4. Old Business
 - a. Sub-committee reports -
 - i. D&E Committee Development & People's Education Sub-committee
 1. Joelen - Jennifer left the group and Joelen is looking to identify a liaison from the school's diversity committee and that allows the committee to have a connection to that committee.
 2. Joelen - A letter to the editor for recruitment and other ideas for recruitment
 - a. Ellen - suggests more targeted recruitment in addition for better representation
 - i. Community Assessment & Definitions Sub-committee
 1. Ellen - provide definitions to the group to comment on
 - i. City Policy and Procedures Review Sub-committee
 1. Nothing new to report
5. New Business:
 - a. Barre City Flag Policy review - Marichel
 - i. Joelen made a statement that the committee's purpose is not to argue if racism exists. The City provided a charge for the group and that is what the group will work on.
 1. The committee's charge is to review the proposed flag policy provided by the City Council

- ii. Ellen recapped the Flag Policy history as it was proposed at council and how it was provided to the D&E Committee.
- iii. Chris - did not review the policy after William's email about flag policy and wanted to postpone review until the committee was clear on what policy they were reviewing. Chris should be able to review during the meeting and after if more review is needed.
- iv. Marichel - Explained how she has looked at the proposal and plans to review the Council's proposal. First she reviewed the Flag Policy with the League of Cities and Towns. Marichel forwarded the response to the committee (included as an attachment to minutes). Town is supported by the government speech doctrine and any documents should go through the city's attorney. No history of towns being sued from flying the Black Lives Matter flag in Vermont.
- v. Danielle - Reviewed the Flag Policy provided by the Council with the strikethroughs. Supports the proposed Flag Policy from the council with the removal of strikethroughs and addition of more detail where D&E based language is used.
- vi. Chris - Question for Counciller Hemmerick asking if he used Montpelier's policy. Jacob said yes. Chris feels that speech used in the Flag Policy is fair in terms of law.
- vii. Ellen - asked Chris and Jacob if we can add "not promoting harm of any individual or group".
- viii. Jacob added: I saw these restrictions in funding program limitations today that made me think of parallels: Partisan, Political or Election Related Activities; For profit entities and projects that promote a for-profit entity and/or its products or services; Use of funds to publicly criticize, ridicule, disparage or defame any person or institution; Use of funds in a way to discriminate against person on the basis of race, color, national origin, religion, gender, age, disability, ancestry, creed, pregnancy, marital, parental status, familial status, sexual orientation, status as a veteran, physical, mental, emotional or learning disability, or any other characteristic protected by federal, state, or local law.
- ix. Joelen - Supports in the language shared by Jake.
- x. Ellen - Asked if cover memo submitted with original proposed flag policy should be included. Jake said no.
- xi. Ellen - Recommended added to flag examples, flags supporting social justice.
- xii. Danielle - brought up Lucas's ask for additional approval of flags/art in other public spaces and asked if we could address the additional approvals as they come up.
 - 1. Ellen suggested that we include a memo that would address Lucas's issues and accompany policy.
- xiii. Steve - When we send the policy to the Council include a cover memo and attend a meeting to be there to answer questions.

1. Council meeting on the 10th of November. Need to have the recommended policy the Thursday before the council meeting on the 10th
- xiv. Group continued to review the document and determined that the flag policy with recommendations would be reviewed by Marichel and Christopher and Joelen would put together the cover memo
6. Set next meeting Date: Monday, November 2, 2020 at 6:15PM
7. Round Table
 - a. Ellen to work with the Arts Committee to put on a community event and SPA - studio place arts
 - b. Marichel - think about how to connect with the arts council
 - c. Joelen - Collaborate with Central VT Showing Up for Racial Justice (SURJ) and Barre school committee to put together an event
 - d. Marichel - suggested having a summit to meet with other committees to introduce ourselves
 - e. Joelen - asked committee to come up with a list of organizations that could be part of a summit
8. Adjourned at 7:23 PM.

Action items

1. All - Come up with a list of organizations that could be part of a summit.
2. Ellen - Put together definitions and share back with the group.
3. Chris & Marichel - Review Flag Policy and share draft with committee for next meeting for approval
4. Joelen - Write cover memo for Flag Policy

1) Motion: Move to adopt minutes as amended.

Mover/Second: Ellen/William

Result of vote: All approved

2) Motion: Support of Flag Policy with additions

Mover/Second: Danielle/Motion was not seconded b/c of concerns with a need to change language and review the Flag Policy.

Result of vote: No vote

Meeting adjourned:

Mover/Second: William/Marichel

Time: 7:23 PM

Next meeting date/time/location: Monday, November 2 at 6:15 PM via Zoom



Danielle Owczarski



Danielle Owczarski <owczarsd@gmail.com>

Fwd: Legal Repercussions of Displaying BLM Flag

1 message

Marichel Vaught <marichel.vaught@gmail.com>

Tue, Oct 6, 2020 at 12:04 PM

To: D&E Committee <DECommittee@groups.outlook.com>, Ellen Kaye <elkaye3@gmail.com>, Joelen Mulvaney <joelenmulvaney@hotmail.com>, Danielle Owczarski <owczarsd@gmail.com>, christopherpaulroberts@gmail.com, WilliamToborg <wlt1@caa.columbia.edu>

I asked the Vermont League of Cities & Towns if they were aware of any towns that have faced/are facing legal action as a result of displaying a BLM flag. Here is their response:

----- Forwarded message -----

From: **Susan Senning** <ssenning@vlct.org>

Date: Tue, Oct 6, 2020 at 11:56 AM

Subject: RE: Legal Repercussions of Displaying BLM Flag

To: Marichel Vaught <marichel.vaught@gmail.com>

Hi Marichel,

I am not personally aware of any towns facing legal actions as a result of making a political statement itself by flying a BLM flag or adopting and implementing a policy to govern such requests from outside groups. However, that is not to say one couldn't happen in such times as these. These issues are highly fact-dependent and specific and involve lots of legal considerations, including parameters drawn by the First Amendment case law.

What follows is general information about regulating speech on public property. The rules that apply to these speech situations will ultimately depend on who is "speaking" or, in other words, who is installing the sign or flag (i.e. members of the public versus the town/Council/selectboard). If the Council wants to take a position in support of the Black Lives Matter movement, it can do so. If the town is posting signs or flying a flag itself (as a Council by majority vote) and not allowing others to do so as a result of a request, then there is a so-called "government speech doctrine" that applies. The government speech doctrine is explained here: <https://www.law.cornell.edu/constitution-conan/amendment-1/the-government-speech-doctrine>. So long as the town is not creating an open/public forum for other speakers on town property, then it's government speech; the Council can say what it wants and select the views it wants to express, regardless of the fact that it was funded or gifted by a private third party. See *Pleasant Grove City v. Summum*, 555 U.S. 460, 467–68 (2009). The Council can say what it wants on government property, but it has to be careful about opening up a so-called "limited forum" in which case content-neutral regulations (below) apply.

If the policy is broader and gets into regulating the installation of temporary signs on town property, the following information may be helpful. The general topic of signs and political signs, specifically, brings up a lot of free speech and constitutional considerations. The Council may either prohibit the placement of temporary political signs on town property (so long as it similarly prohibits all temporary signs regardless of content) or, if it plans on allowing them, it cannot then regulate them based upon their content. We always strongly recommend that towns develop a policy or sign ordinance to address this issue in order to provide clear and consistent guidance to its decisions so the City Council is on the right path. Unfortunately, we do not have any models but many towns regulate signs on public property so I would recommend you reach out to others for samples. Content-based regulation of speech (here, on signs or banners or flags) by the government is usually unconstitutional; regulations must be view-point neutral unless they meet a high standard (strict scrutiny) upon legal review. There is a long history of US Supreme Court case law on this point and the types of speech that are allowed to be prohibited and regulated vary, depending on which type of forum you create. Therefore, I strongly recommend consulting the city attorney prior to adopting any policy that will regulate speech.

The following is more in-depth information on sign regulation for your consideration:

- Content-based time limits on signs are unconstitutional. For example, a sign law would be impermissibly content-based if it restricts political signs to less than 60 days but permits the posting of other temporary signs beyond the 60-day period.

- Municipalities may restrict all temporary signs by imposing permit and permit fee requirements but cannot then exempt some classes of signs on the basis of content. For example, a

regulation would be content-based if it exempts temporary real estate signs from the uniform permit and fee requirements for other signs.

- Some local governments pass laws that require political signs to be removed within a short time after an election has taken place. The validity of such laws depends upon whether

they are content neutral and apply to all kinds of temporary signs. A local government can prohibit all signs (temporary or permanent) from being posted on public property so long as the regulation is silent concerning the speaker's viewpoint.

- Such a regulation is considered a valid time, place and manner regulation, which does not violate the free speech clause of the First Amendment. A local regulation that specifically

limits the time in which political signs may be posted may be invalidated if it does not apply alike to signs that display other messages.

Having a clear policy on temporary signs on public property is always best so the town's decisions are consistent, fair, and content/viewpoint neutral. The rule of thumb is that "if you have to read the sign to determine if it's allowed or not, that is a content-based regulation." It should be an all or nothing question- do we allow temporary signs on our property or not? Either way, you cannot choose which to allow based on content (advertising, political, event promotion, etc).

Therefore, regulating signs or flags raises important questions and the policy must be carefully crafted. To reiterate, if the town/Council is acting, this will be a political decision for them to make and they are free to decide what is displayed under the government speech doctrine. If the board is opening up town property to others to display/install signs or flags, then it will need to allow for all or nothing. It may be best to consult with the town attorney before taking action, or at least if/when another group requests anything be taken down or installed by request to be sure each case is handled properly. As always, we recommend working closely with the city attorney to ensure each action the Council takes is legally sound.

I hope this helps.

Sincerely,
Susan

Note: Due to COVID-19, the VLCT Municipal Assistance Center (MAC) is experiencing a high number of legal questions and therefore it may take longer than usual for MAC to respond. Please also understand that if your question is unrelated to COVID-19 or is not an urgent matter, our response time will be extended. If you have an urgent matter and you haven't received a response from MAC, please contact your municipal attorney.

In light of concerns about COVID-19 I am currently working remotely. Addressing member concerns and questions remains a high priority for all VLCT staff. We appreciate your patience as we adapt to virtual communications. Visit <https://www.vlct.org/coronavirus> for recommendations and resources from VLCT and links to the CDC and VT Dept. Health.

Susan E. Senning, Esq.

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From: Marichel Vaught <marichel.vaught@gmail.com>
Sent: Tuesday, October 6, 2020 11:24 AM
To: VLCT <info@vlct.org>
Subject: Legal Repercussions of Displaying BLM Flag

CAUTION: This email originated from outside of VLCT's email system. Maintain caution when opening external links/attachments

Hello,

I am co-chair of Barre City's newly formed Diversity & Equity Committee and member of the Barre's ADA Committee. The D&E Committee has been tasked by Barre City Council to create a flag policy specifically around the display of a Black Lives Matter flag. One of the big concerns the council has expressed is any legal actions that can potentially be brought against the city for

displaying the flag. Are you aware of any cities or towns that have faced such actions?

Many thanks,
Marichel Vaught