



Agenda
Human Relations Commission
October 2, 2019, 6:30 P.M.
Village Center Conference Room
3920 North Murray Avenue, Shorewood, WI

1. Call to order
2. Consider Approval of September 11, 2019 minutes
3. Public Comments
4. Discuss Observations in the Community
5. Staff Liaison Updates
 - a. Update on Student Voting Rights
 - b. Update on Village 2020 budget process
 - c. Summary of September Meeting
6. Consider Recommendation on Signs, Objects, and Communicative Structures on Public Property or in the Right of Way (previously proposed as the Holiday Decorations Policy proposal)
7. Consider nominations and selection of Chair and Vice Chair
8. Discuss Future Data and Research to be completed by the Data Sub-committee
9. Discuss Action Items for November
10. Future Agenda Items and Speakers
11. Adjournment

DATED at Shorewood, Wisconsin, this 26th day of September, 2019,

VILLAGE OF SHOREWOOD
Sara Bruckman, CMC/WCMC
Village Clerk

It is possible that members of and possibly a quorum of members of other governmental bodies of the municipality may be in attendance at the above stated meeting to gather information; no action will be taken by any governmental body at the above stated meeting other than the governmental body specifically referred to above in this notice. Should you have any questions or comments regarding any items on this agenda, please contact the Village Manager's Office at 847-2700. Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals.



Human Relations Commission

Minutes

September 11, 2019 6:30 P.M.

Village Hall

3930 N. Murray Avenue, Shorewood, WI 53211

1. Call to order.

The meeting was called to order at 6:38 p.m.

Members present: Sharveta Parker, Deba Briscoe (by phone), Matt Weiss, McKenzie Edmonds, Gladys Mitchell-Walthour, Sarah Spencer, Jesse Dercks, Mira Lee Prabhu and Julia Appel

Others present: Assistant Village Manager Tyler Burkart, Trustee Davida Amenta, Director of Equity Sam Coleman, Charlie Desando, Lt. Thomas Liebenthal, Tr. Wesley Warren

2. Consider Approval of August 8, 2019 minutes

Ms. Mitchell-Walthour moved to approve the August 8, 2019 minutes. Motion seconded by Ms. Edmonds. Motion approved by a 7-0 vote.

3. Public Comments

Mr. Sam Coleman was in attendance to introduce himself as the Director of Equity with the School District. There was some discussion with Mr. Coleman about recruitment and retention for minority teachers and professionals in the District.

4. Discuss Observations in the Community

Shorewood Moving Forward is meeting this upcoming Saturday to discuss the holiday decorations policy and the process utilized to develop the policy. There was a mention of how some of the high level classes has fewer diversity among the students perhaps due to some systemic challenges for students of color. Additional discussion involved bathroom locations in the schools for non-binary and trans students. Kerri and Sarah performed ride-alongs with the officers, which was covered in the Shorewood Today magazine.

5. Staff Liaison Updates

Mr. Burkart informed the Commission they will be revisiting the holiday decoration policy in October. There were a number of items that still need to be clarified in the policy, specifically relating to special events, defining key terms such as a decoration and secular items, and addressing the equal protection clause proposed by the Village Attorney Nathan Bayer. An updated policy will be completed by the end of this week and will ask a few members of the policy subcommittee to meet with staff and Tr. Amenta to review the updated language. Student voting rights was deferred once more due to language about Shorewood students needing to be a resident to be a member. This language is updated to reflect that one needs either to be a Shorewood student or a Shorewood resident. The updated language also amended the selection process for students. President Rozek had some other minor revisions. The ordinance will go back to the Village Board for their September 16 meeting.

6. Discuss and Reflect on First Year of Implementation of the HRC

What have we done well?

- Deep and meaningful thought about the holiday decorations policy
- Discuss uncomfortable topics with one another
- Several people taking ownership and engagement of topics
- Welcoming environment for the public and visitors
- Asking all those that applied to be a part of the sub-committees
- Inclusion of the high school students
- Initiating discussions and moving them forward

What areas do we need to improve in?

- Retention of members – potentially incorporate an exit interview for members leaving with staff liaison and one other committee member or Trustee Liaison
- Training on handling difficult conversations and developing common terminology
- Understanding people are human and will make mistakes. Everyone who comes to the table are sharing the same passion in attempt to tackle human relation issues.
- If something is on your mind, speak and be honest with the group rather than holding it in
- Reset the norms as new members join
- Visual of ground rules and reminders of how to work together – Data subcommittee
- Communication and updates for subcommittee members in between meetings
- Establish more concrete times to meet outside of normal business meetings

Review the mission statement and purpose of the HRC.

- General support for the mission statement and ordinance language
- Narrow scope that could incorporate more policy discussion and assess the impact on minority and other underrepresented populations

Thoughts on meeting structure

- Go back to monthly business meetings – one hour from 6:30-7:30 p.m.
- After business meetings allow time for sub-committees to focus on action items
- Put on the agenda near the end a time to solidify the action items that need to be accomplished for the next meeting
- Create subcommittee chairs to help accountability in accomplishing action items and setting up separate subcommittee meetings.

Subcommittee Chairs – Mira Lee and Julia (Policy), Sarah (Education), McKenzie (Data)

Role of the Chair

- Keep discussion on agenda item
- Email subcommittee chairs each month to assure they are making progress on action items

- Election of chair will be on the October agenda

There was an inquiry related to recruiting more subcommittee members. Mr. Burkart agreed to put together an article in upcoming Village communication to help with the recruitment efforts.

7. Future Agenda Topics and Speakers

The next Human Relations Commission meeting is October 2 at 6:30 p.m. All members should email Mr. Weiss ideas of reflection questions for the Farmers Market. On the Table MKE is October 10.

8. Adjournment

Ms. Spencer moved to adjourn the meeting. Motion seconded by Ms. Briscoe. Motion approved by 7-0 vote. Meeting adjourned at 8:14 p.m.

Respectfully submitted by,

Tyler Burkart
Assistant Village Manager



Village Attorney's Office

Nathan J. Bayer
William P. Dineen

MEMORANDUM

TO: Rebecca Ewald and Tyler Burkart
FROM: Nathan Bayer, Village Attorney
DATE: September 26, 2019
RE: **Proposed Policy Regulating Signs and Displays in Public Spaces**

The purpose of this memorandum is to 1) outline the constitutional constraints when a municipality allows third parties to conduct activities in, or display signs or symbols on, public spaces, 2) address distinctions between the granting of special privileges or permits for activities in parks or rights of way, as differentiated from more permanent displays of signs or “communicative structures” in public spaces; 3) to discuss why the original proposed Human Relations Commission (“HRC”) policy that only addresses holiday displays (either religious or secular) was incomplete and could still have left the municipality open to constitutional challenges, and 4) to offer prospective policy language that is both consistent with the intent expressed by the Village Board and consistent with constitutional constraints, based upon discussion at the last HRC meeting.

When municipalities are challenged on what it displays in a public space, or allows third parties to display in a public space, it is usually on the grounds that the government action either violates the U.S. Constitution’s establishment clause, free expression clause, or equal protection clause, or some combination thereof. It is impossible to make any sweeping generalizations about what is and isn’t acceptable, precisely because the court decisions interpreting these clauses are so fact and case specific, and sometimes lead to what would seem inconsistent rulings. However, each of these clauses is discussed below to lay out the general criteria upon which government action will be judged.

In Lemon v. Kurtzman, 430 U.S. 602 (1971), the U.S. Supreme Court enumerated a test to determine whether a government action or policy violated the establishment clause of the U.S. Constitution. (“Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof...”) To pass constitutional muster, the government action/policy must 1) have a secular purpose, 2) have a principal effect that neither advances nor inhibits religion, and 3) must not foster excessive government entanglements with religion. Failure to meet any one of the three prongs of the test means that the government action or policy should fail.

The free speech clause of the U.S. Constitution should also be kept in mind whenever a municipality regulates speech and assembly on public property. (“Congress shall make no law... abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble...”) A full discussion of the free speech clause is beyond the scope of this memo, but it bears mention here because in light of the “holiday decoration” discussion, some follow up questions arose about how that is different from, or is impacted by, third party use of parks and public rights of way for special events, and even the use of library rooms by private groups.

The Supreme Court has enumerated different constitutional tests for regulation of speech and assembly depending on whether it occurs in a “traditional public forum,” in a “limited public forum,” or in a “non-forum.” Perry Education Association v. Perry Local Educators, 460 U.S. 37 (1983). If an individual decides to walk around a public park or sidewalk with an overt religious (or political) symbol attached to their back or suspended above their head, as long as there is no immediate safety hazard involved, their right to do so is protected free speech. While that concept is generally straight forward, things become more complicated when third party groups seek permits to hold parades on municipal streets, demonstrations in public parks, or seek to conduct meetings on municipal facilities, such as the library.

Municipalities sometimes believe that they must reject any special privilege or permit request that is religious in nature, thinking that it would violate the establishment clause discussed above. However, this assumption is incorrect. In Lambs Chapel v. Center Moriches Union Free School District, 508 U.S. 384 (1993), the Supreme Court ruled that permitting school property to be used for the presentation of all viewpoints on a particular issue, **except** those dealing with that issue from a religious viewpoint, constituted discrimination under the free speech clause. The point is that once a municipality opens its public spaces to third party groups, it must do so in a manner that does not discriminate based upon the content of the speech. To comport with the constitution, any permitting for activities or parades on public spaces must be content neutral and be narrowly tailored to serve significant governmental interests.

When a municipality’s permitting or special privilege process governing third party use of public spaces for special events comports with applicable constitutional requirements, the event held is not an impermissible endorsement of religion by the municipality. For example, in Widmar v. Vincent, 454 U.S. 263, the Supreme Court held that the establishment clause was not violated when a public university allowed a religious group to use meeting rooms for sectarian activities, even when accompanied by “devotional exercise.” The reason is that the school granted equal access to its facilities on a “religion-neutral basis.”

The U.S. Supreme Court recognizes that there is an inherent contradiction between the establishment clause and the free exercise clause discussed above. For example, a municipality that tries to be conscientious about accommodating religion or religious practices could then be challenged on the grounds that it is violating the establishment clause by favoring that religion. But by the same token, the municipality that refuses to accommodate a religious group in order to avoid a claim that it is violating the establishment clause could be challenged on the ground that it violates the free exercise clause. Given this natural tension, the decisions by the Court are often based upon the individual specific facts of each case.

My opinion is that Village currently employs a content neutral application process for special events/parades/demonstrations that comports with constitutional requirements.¹ I began with a discussion of special events to draw a **distinction** between those special events, as opposed to a request to simply display a sign, religious symbol, or other “communicative structure,” as termed by the Seventh Circuit, in a public space. The important point is that just because the Village allows access for special, temporary events under a neutral permitting and privilege process (for events that may also include posting signs during the event), does not mean that it is compelled to give unfettered access to its public spaces to display more permanent symbols or signs.

When discussing signs, religious symbols, or other displays in a public space, we start with the premise that no municipality is obligated to allow *any* private group to display any item, *be it religious or secular*, on public land. In the case of Lubavitch Chabad House, Inc. v. City of Chicago, 917 F.2d 341 (1990), a federal court in Illinois held that:

We are not cognizant of, nor has the appellant appraised us of, any private constitutional right to erect a structure on public property. If there were, our traditional public forums, such as our public parks, would be cluttered with all manner of structures. Public parks are certainly quintessential public forums where free speech is protected, but the constitution neither provides, nor has it ever been construed to mandate, that any person or group be allowed to erect structures at will...

Lubavitch, 917 F.2d at 347. (emphasis added); see also Graff v. Chicago, 9 F.3d 1309 (7th Cir. 1993).

Equal protection concerns under the Constitution come into play once that threshold is crossed, and a municipality allows displays on public land. Once any group, **religious or secular**, is allowed to erect what the court calls “communicative structures,” it cannot then deny equal access to others. The Lubavitch court stated:

First Amendment jurisprudence certainly does mandate that **if the government opens a public forum to allow some groups to erect communicative structures, it cannot deny equal access to others because of religious considerations**, Widmar v. Vincent, 454 US 263, 102 S.Ct. 269 (1981), but the record is clear that the city has prohibited all groups from erecting structures in the airport public areas.

Lubavitch, 917 F.2d at 347.

Once a municipality allows such expression in its public spaces, the balancing act is how to fairly grant equal access while comporting with all constitutional constraints, and not having those spaces “cluttered with all manner of structures,” as noted by the 7th Circuit in Lubavitch. In 2008, Manitowoc County was sued for allowing a religious display in front of

¹ The Village also sometimes grants special privileges that allow more permanent structures to be placed its right of way. Examples include cell equipment tethered to municipal poles, or planters or retaining walls of residents that intrude past a lot line. Such permission does not raise constitutional considerations because these are not “communicative structures” that raise any free speech or establishment clause issues. My opinion is that the fishing line the Board recently granted a special privilege for (to support the Eruv) has no inherent or intrinsic religious meaning and was properly analyzed under the criteria as any other special privilege request, and that its granting comported with all constitutional considerations. Our archives show that such a request was previously granted by the Village in 2001-2003.

its courthouse. To address the suit, it decided to allow a large area with multiple 20 x 20 foot squares of land in front of the courthouse to be filled by any group that applied for a permit to display there. Under the policy, the municipality could end up with displays from essentially any religious or political group. As long as some minimal standards relating to language and content are adhered to, any group is allowed to display. My understanding is that given the space limitations on its public land, the Village is not interested in this “unfettered access” approach.

With the foregoing authority in mind, we now look to the original proposed policy by the Human Relations Commission (“HRC”). This policy raised potential constitutional concerns. First, when addressing the display of what the Seventh Circuit described as “communicative structures,” it may not be seen as content neutral. While the proposed HRC policy prohibited the display of certain types of religious “symbols,” it did not prohibit the display of other types of non-religious symbols. For example, the policy did not address how a request from Planned Parenthood would be handled, if it requested to display its logo on a sign at Atwater Park. If allowed, the policy, on its face, would then appear to prevent a religious group from placing a cross next to that symbol. This could open up the municipality to arguments based upon free expression, the establishment clause, and equal protection/access.

The HRC policy also suggested that it may apply to personal workspaces, which could potentially violate the free expression clause discussed above. (It stated that “it is the policy of the Village of Shorewood to not allow any person, organization, or group to display any religious or secular holiday themed decoration(s) in public buildings and spaces.”)

Another issue with the proposed HRC policy is that while it narrowly addressed “holiday themed” decorations that are religious, it did not address displays of other religious symbols. There are certainly general “religious symbols” that are not necessarily “holiday themed.” It also only covered “public buildings and spaces,” the definition of which does not include public rights of way or parks. A more comprehensive plan that accomplishes the same general purpose and intent of the HRC policy, which is to generally prevent third party groups from displaying communicative structures in the right of way, was discussed at the last HRC meeting, and proposed language to that effect is included below.

My recommendation is that any new policy be limited to addressing third party displays only. The municipality is already constrained by the federal and state constitution in what it can display on its own property. But within that framework, since it owns the land, it doesn’t make practical sense to require the Village to grant itself permission to, for example, erect a sign on the front yard of the Village Hall to promote an upcoming Village or school district event, to display a trophy or certification awarded to the Village by an outside group, or even erect a temporary art installation. Once the Village is included, the policy would necessarily become incredibly cumbersome and lengthy attempting to identify all of the items the Village can display on its own property. Also, it could inadvertently open up the Village to a challenge that it displayed an item that was otherwise innocuous under the constitution, but not specifically contemplated by the Village’s policy.

After discussing the issue with Village staff, and in light of the discussion at the last board and HRC meetings, it appears that the ultimate purpose and intent of the HRC policy, and the Board, is to essentially memorialize the existing policy employed by the Village, which is not necessarily clearly illuminated in one place. These are the Village’s existing ordinances,

and the Village's formal/informal policies regulating the placement signs or other "communicative structures" by third parties in or on public land as described by staff:

- Village Code §354-11 prohibits any third party from affixing a notice, poster, or paper to a municipal lamppost, utility pole, tree, or any other public structure or building;
- Village Code §445-10 allows limited displays in the right of way on temporary "sandwich boards" in the Central Business District;
- While the general Village policy is to not allow any third party groups not directly associated with the Village to erect signs, symbols, or other structures on municipal property, the Village has allowed extremely limited signage promoting public events that are held for the direct benefit of Village Residents, namely the Shorewood Farmer's Market and "Summer Sounds";

My opinion is that Shorewood's current approach comports with existing constitutional constraints. Any entity that meets the criteria enumerated in the Village Code is eligible to display a sandwich board in the limited area in front of its own property. Also, allowance of very limited displays of signage promoting public events that are held for the direct benefit of Village Residents should not raise free speech/equal protection/equal access issues. The purpose and intent of a new policy is to consolidate the above referenced practices in one place that is clear to all.

With these issues in mind, prospective policy language addressing displays on municipal property for the Village to consider would be as follows:

The general policy of the Village of Shorewood is to not allow any group not directly affiliated with the municipality to erect outdoor signs, symbols, or other structures on any municipal property. Notwithstanding the foregoing, the Village may, at its discretion, and in a location determined by the Village, allow signs promoting the following public events that are held for the benefit of Village residents: the Shorewood Farmer's Market and "Summer Sounds."

This policy does not apply to: displays erected in conjunction with a special privilege permit granted under Chapter 466 of the Village Code, displays in the Business District as enumerated in Village Code §445-10, displays during permitted events at Wood Square, or to municipal property leased to third parties. This policy also does not abrogate the prohibition from affixing a notice, poster, or paper directly to a municipal lamppost, utility pole, or public building or structure as enumerated in Village Code §354-11.

"Affiliated with the municipality" means all departments of the Village, the Library, and all municipal boards and/or committees created pursuant to state statute or local ordinance, including but not limited to the BID Board and CDA.

Questions concerning this policy may be directed the Village Manager's office.

I believe this policy comports with constitutional constraints as enumerated by the Courts.

I look forward to working with the HRC and the Board to finalize this policy.



Policy No. 37	Page: 1	Page 1 of 1
Title: Signs, Objects, and Communicative Structures on Public Property		
Authority: Shorewood Village Board		

The general policy of the Village of Shorewood is to not allow any group not directly affiliated with the municipality to erect outdoor signs, symbols, or other structures on any municipal property. Notwithstanding the foregoing, the Village may, at its discretion, and in a location determined by the Village, allow signs promoting the following public events that are held for the benefit of Village residents: the Shorewood Farmer’s Market and “Summer Sounds.”

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“Affiliated with the municipality” means all departments of the Village, the Library, and all municipal boards and/or committees created pursuant to state statute or local ordinance, including but not limited to the BID Board and CDA.

Questions concerning this policy may be directed the Village Manager’s office.

Shorewood



AT THE EDGE OF THE CITY AND
THE HEART OF EVERYTHING

October 21, 2019

Village Board
3930 N. Murray Ave.
Shorewood, WI 53211

RE: Recommendation related to holiday decorations on public property

Dear Village Board members,

We collaborated with Village staff and the Village attorney on drafting an updated policy to address inquiries about holiday decorations on public property. The Human Relations Commission feels it is important to create a culture that is inclusive to all religions and beliefs. In addition, we also want to be mindful of complying with the law when it comes to freedom of speech and the establishment clause as cited in Attorney Bayer's memorandum.

As a result, we present an updated policy that doesn't allow for any holiday decorations from third parties on public property or in the right-of-way. While the policy doesn't specifically touch on holiday decorations put up directly by the Village, we encourage the Village to use its discretion to only put up secular decorations without a religious meaning and tend to be seasonal in nature. In addition, while Christmas trees have legally been declared secular, we the Human Relations Commission feel that in the case of the Christmas tree, the Village Board and staff should exercise its discretion to not put up lights on any tree that could constitute as a Christmas tree. Legal definitions do not always align with public sentiment, and we believe that to light an evergreen that could be interpreted as a Christmas tree while being legally obligated to disallow other religious symbols favors one religious tradition over others.

It is our understanding that all other holiday decorations put up directly by the Village are more seasonal in nature. We continue to support events such as WinterFest that put up decorations on private property and make a concentrated effort celebrating all holidays. Thank you for the opportunity to review this policy matter.

Sincerely,

Human Relations Commission