



CITY OF SAN MATEO

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Agenda Report

Agenda Number: 13

Section Name: {{section.name}}

File ID: {{item.tracking_number}}

TO: City Council
FROM: Drew Corbett, City Manager
PREPARED BY: City Manager's Office
MEETING DATE: March 15, 2021

SUBJECT:

Markers for Places of Public Interest in the Public Right of Way – Resolution and Ordinance Introduction

RECOMMENDATION:

Approve a Resolution to adopt a policy on Markers for Places of Public Interest in the Public Right of Way and introduce an Ordinance to amend the San Mateo Municipal Code Chapter 17.08.020 "Placing Certain Objects in the Public Right of Way" to allow for public markers and making other necessary minor revisions to the chapter.

BACKGROUND:

In March 2020, the City Council moved to support a proposal from the nonprofit San Mateo Parks Foundation to commemorate the former Ching Lee Laundry with a marker in the public right of way at First Avenue and Claremont Street. At that time, the Council delayed a decision on adopting a policy that would establish a clear process and objective criteria regarding markers in the public right of way.

Since then, staff has worked with the Parks Foundation to proceed with accepting a donated marker in the form and location as proposed. While that work is underway, staff recommends the Council reconsider a policy on Markers for Places of Public Interest in the Public Right of Way to formalize the process for approving privately-financed markers and address First Amendment considerations. Staff has adjusted the previous proposed policy to incorporate Council's feedback by removing preferred design guidelines while maintaining objective review criteria. A proposed resolution and the draft policy are included as Attachment 1.

Staff also identified a municipal code amendment for Chapter 17.08.020 "Placing Certain Objects in the Public Right of Way" to support installation of such markers. Staff recommends including in the ordinance other general code clean up and provisions to allow for restaurant seating areas, as approved by Council resolution, as is currently in place with the Temporary Outdoor Dining Guidelines.

Proposed Policy on Markers for Places of Public Interest in the Public Right of Way

The City has an interest in acknowledging and commemorating San Mateo's culture and history by recognizing places of significant interest. The proposed policy covers markers in the public right of way, such as on streets or sidewalks. This policy does not affect art installations or markers in City parks, on City buildings, or on private property. Whenever feasible, those interested in commemorating a site of public interest are encouraged to install a marker within the property being recognized and not within the public right of way. Markers affixed directly to a building are covered under the City's sign ordinance.

Because City streets and sidewalks are a traditional public forum, First Amendment considerations are implicated when decisions are made regarding signage in the public right of way and those decisions are subject to "strict scrutiny" pursuant to the Free Speech clause of the First Amendment. However, there is an exception for "government

speech.” (*Pleasant Grove City v. Summum* 555 U.S. 460 (2009).) The *Summum* court held that acceptance and installation of permanent monuments on public property is a form of “government speech” that is immune from First Amendment review. The *Summum* court noted that objective selection criteria are helpful to establishing that a city council has final approval authority over a marker and that the marker is therefore a form of “government speech.” The proposed policy includes draft selection criteria for the Council’s consideration.

The draft policy outlines five qualifying criteria proposals must meet:

- (1) The site is a place of public interest or represents a person or organization whose contributions were significant to San Mateo’s heritage.
- (2) The site is not currently marked and would likely not be eligible for the state or national registry.
- (3) The proposed marker is within the public right of way controlled by the City.
- (4) The marker is within public view and its placement conforms with the Americans with Disability Act standards.
- (5) The marker is privately funded or the Council is willing to commit public funds.

If Council agrees with these selection criteria, staff recommends adoption of the proposed Resolution establishing this policy identifying the parameters under which the installation of privately-financed monuments within the City’s public right of way will be considered. A policy would provide Council with the final decision about what to commemorate in the public right of way and would help to establish this signage as “government speech.”

Municipal Code Amendments

Staff has prepared an Ordinance to amend the San Mateo Municipal Code Chapter 17.08.020 "Placing Certain Objects in the Public Right of Way." The proposed amendments include adding a section to allow signs placed by the City to identify a place of public interest in the public right of way. In addition, the Ordinance cleans up some outdated references in this code section; replacing reference to “Superintendent of Streets” and “City Engineer” with “Public Works Director or Designee,” and including a provision in the restaurant seating section to reference outdoor dining guidelines as adopted by City Council resolution. This change is being proposed now in reference to the City’s existing Temporary Outdoor Dining Guidelines. Any future policy changes regarding outdoor dining will be considered at a later date. An ordinance and proposed Municipal Code amendments are included as Attachment 2.

BUDGET IMPACT:

There is no fiscal impact for taking this action.

ENVIRONMENTAL DETERMINATION:

This item is not a project subject to CEQA, because it can be seen with certainty that it will not cause a physical change in the environment. (Public Resources Code Section 21065.)

NOTICE PROVIDED

All meeting noticing requirements were met.

ATTACHMENTS

Att 1 – Proposed Resolution

Att 2 – Proposed Ordinance

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