



**Date:** July 13, 2020  
**To:** Mayor and City Council  
**From:** Eric Figueroa, City Manager  
**Prepared by:** Michael Chandler, Deputy City Manager  
Jeff Walter, City Attorney  
**Subject:** Public Art or Expressions on City Property

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### **Recommendation**

Receive report, hold discussion, and provide direction to staff regarding process for installing/placing public art or expressions on City property and possibly create an ad hoc subcommittee and appoint members to assist staff in studying and making recommendations regarding this issue.

### **Background**

On June 27, 2020, the Martinez Police Department was alerted to a report of flyers containing hate speech left on the sidewalk near the downtown area. The flyers made threats against those supporting the Black Lives Matter movement and contained racially offensive and demeaning language. A copy of the flyer is included as Attachment 1.

The hateful flyers were an affront to the City's adopted values supporting inclusion, diversity, and acceptance. The City's Vision Statement, adopted on June 21, 2017 with the Strategic Plan within the City's FY 2017-19 Budget, reads:

*Martinez is an inclusive, family oriented, safe community, with small town waterfront character, diverse neighborhoods, complemented by plentiful parks and open spaces. Martinez has a historic downtown, with a legacy of culture and the arts, fostering a vibrant and sustainable economy, striving for well-maintained infrastructure, and a responsive high performing government.*

In response to news of the hate flyers, local volunteer Justin Gomez, representing "Martizians for Black Lives," approached City staff on June 29<sup>th</sup> with a request to paint a "Black Lives Matter" temporary mural in the downtown area, similar to other street murals being painted in numerous California cities and throughout the nation. The event

proposer requested an expedited review process by the City in order to allow for the painting as a timely response to the offensive flyers from the weekend before. On June 30<sup>th</sup>, at the direction of the City Manager, staff began coordinating with Mr. Gomez on the administrative, logistical and operational requirements of the mural as a co-sponsored “special event” facilitated by the City.

On June 30<sup>th</sup>, Mayor Schroder issued a statement (Attachment 2) condemning the hate flyers. The Mayor pointed towards specific resolutions the City Council has adopted to affirm its commitment to promoting unity and inclusiveness, including:

- Resolution No 025-17, adopted on March 15, 2017, “Declaring the City of Martinez’s Commitment to being an Inclusive, Tolerant, and Supportive Community for Everyone,” (Attachment 3); and
- Resolution No. 111-17, adopted on October 4, 2017, “United Against Hate,” which condemned, “intolerance of any individual or group and hate speech of any kind” and reaffirmed the City’s “commitment to serving and protecting all of our residents, with a high value placed on diversity, equality, and inclusivity.” (Attachment 4)

On July 1<sup>st</sup>, the City Council took urgency action to adopt Resolution No. 074-20, as a statement on “Equity and Justice for All” (Attachment 5). This most recent resolution – and the aforementioned statements and actions of the Mayor and City Council – are indicative of the City Council’s support for all citizens of Martinez, regardless of race or class. The City Manager’s direction to staff to work with the muralists on the project as a co-sponsored event was consistent with the past official actions and statements of the Mayor and City Council.

On July 2<sup>nd</sup>, the City Manager administratively approved the permit (Attachment 6) and the event was held on July 4<sup>th</sup> with a total of 95 volunteers attending, the majority of which were Martinez residents. Even though the event was co-sponsored by the City and facilitated by City staff, and insurance coverage was provided by the City, the City required a permit because the event was proposed by Mr. Gomez, and he and other volunteers, not City staff, were the persons who offered to paint the mural on the street. The event volunteers were responsible for procuring and supplying all of the necessary paint (a non-toxic and non-hazardous children’s Tempera paint; see Attachment 6 for details and Safety Data Sheet information) and marking materials, and were responsible for ensuring participants wore masks and practiced social distancing. Although no specific timeframe for removal of the mural was established through the permit process, the City Manager communicated with the event proposer regarding potential dates by which the mural would be removed.

City staff's responsibilities for the event included coordinating the necessary street closures (barricades, no parking signs); notifying affected adjacent business owners and the Veterans' Hall; notifying bus lines, EMS, Fire and Amtrak; supplying Mr. Gomez with event participants liability waivers; and any necessary coordination and additional support from the Police Department. A Recreation staff member was assigned to monitor the event throughout the day.

## **Discussion**

### Past Practice for Public Art on City Property

The City's past practice for placement or installation of public art on City property, for other than weekend festival events and such, has included a public review process, typically conducted through the City's subsidiary, advisory bodies charged with vetting proposals and making recommendations to the City Council, the latter of which retained final decision-making authority over what art or other expressive activity was allowed to be placed or installed on City-owned property. Those subsidiary bodies included the former Arts and Library Commission and Arts and Library Mural Subcommittee and the current Parks, Recreation, Marina and Cultural Commission (PRMCC) and its Cultural and Arts Subcommittee. Some examples of public art projects routed through the Commission advisory process and accepted and approved through the City Council include the following:

- Mural illustrating City's regional history in six-panel display under west side of Highway 4 overpass, painted in 1996 by Daniel Galvez
- Mural illustrating a variety of Martinez historical figures and depictions, on concrete wall on outside of Main Street Plaza facing Main Street, painted in 2011 by Mario Alfaro
- Mural illustrating wildlife living in and around Alhambra Creek, on concrete wall of Marina Vista Bridge, painted in 2016 by Mario Alfaro and commissioned by local non-profit Worth-a-Dam
- Mural illustrating the "Small Town with a Big Heart" concept in the Main Street Plaza, painted in 2016-17 by local artist Colleen Gianatiempo and approximately 85 volunteers
- Utility Box Art design concepts created by four regional artists, to be installed on four utility box sets throughout Martinez in 2020

In some instances, these projects took several years for the concept to be realized through installation on public property. This public vetting process was not followed in co-sponsoring the Black Lives Matter mural installation. Even though the mural was only intended to remain for a very limited duration, the public vetting process used for other forms of public art should have been followed, and it was an error not to do so.

### Government Speech Policy – Use of City Website and Community Billboard

The administrative process utilized for the recent mural on City property was expedited specifically in response to the hate flyers found in downtown Martinez and not intended to create a “designated public forum” whereby individuals or organizations could apply for and receive permits to post paintings, messages, or other expressions on City streets or other public property, regardless of whether (i) the content was approved by the City Council, (ii) the permit was subjected to the normal public vetting process and (iii) the content was consistent with the City’s goals, objectives, vision, or values. That the surfaces of the City’s streets have not been converted into “free speech” canvases available to all who wish to paint or affix any other material to them is further buttressed by the fact that the administrative process leading up to the Black Lives Matter installation was at odds with the City’s long-standing practice of requiring a public vetting process and Council approval for the installation of expressive representations on City-owned property.

To this point, and by way of further illustration that the City retains exclusive control over what messages are allowed to be placed on City-owned property and platforms, the City Council set a clear mandate on October 19, 2011, when it adopted Resolution No. 104-11 approving the “City Policy for Website Posting and Community Message Billboard” (Attachment 7). This policy clarifies that, “In all cases, the City has the sole discretion of determining what will be posted to the City’s website, or advertised on the community message billboard as each of these methods of communication are forums for government speech only”. Similarly, the City has sole discretion of determining what types of public art or expression are authorized for installation on public property.

### Options for Consideration and Recommended Action

Given the divisive reactions to the painting of the Black Lives Matter mural on Court Street, the City Council may want to consider several options for addressing public art in the future, which may include developing specific guidelines for:

- the type of art or expressions to be authorized on City property,
- the locations and/or type of City property on which art or expressions may be placed or installed, and
- the process by which public art or expressions are to be approved

The City Council may also wish to create an ad hoc subcommittee and appoint members of the Council tasked with studying and making recommendations to the full Council regarding these issues.

It is recommended that the City Council direct the City Manager to conduct further investigation into the various options available to the City to develop procedures and

standards for the solicitation, vetting, approval and installation of public art and expressive representations on City-owned property and return to the Council with recommended approaches to these matters.

It is further recommended that the City Council appoint two of its members to function as an ad hoc subcommittee to assist the City Manager in performing the tasks mentioned above.

**Fiscal Impact**

N/A

**Attachments**

- Attachment 1 – Hate Flyer Found in Downtown Martinez on June 27, 2020
- Attachment 2 – Mayor’s Statement of June 30, 2020
- Attachment 3 – Resolution No. 025-17 “United Community”
- Attachment 4 – Resolution No. 111-17 “United Against Hate”
- Attachment 5 – Resolution No. 074-20 “Equity and Justice for All”
- Attachment 6 – Approved Special Event Permit Temporary BLM Mural (redacted)
- Attachment 7 – City Policy for Website Posting and Community Message Billboard