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## Council adopts banner policy, with reservations

By Sora O'Doherty



Banners in Lafayette. Photo Sora O'Doherty

After years of pondering the issue, the Orinda City Council has agreed to adopt a policy on the use of banners in the city.

As it turns out, those pretty pole banners residents and visitors see in Orinda and other cities hide a thorny constitutional law question. Orinda had to decide if it wanted its policy to be "city speech," which means that the city pays for the banners and has complete discretion about what the banners say; or "public forum," which makes them constitutionally protected free speech. While council members favored the city speech option, the challenge was that the Orinda Association, which puts on the Fourth of July Parade each year, really wanted to be able to use sponsorship on the banners to defray the nearly \$40,000 cost of the event.

After an evening of grappling with the issue again, the council unanimously approved a public forum policy, but with very tight restrictions. Joe Garvey of the Orinda Association and Sophie Braccini, the executive director of the Orinda Chamber of Commerce, urged the council to

adopt the broader public forum policy recommended by staff. Tim Farley, director of community and government relations and Tri Nguyen, director of institutional marketing for Saint Mary's College, spoke to the council of their desire to put up banners to build relationships with Orinda and to raise awareness of the college, which they described as being in Orinda's backyard.

Last July, the city's attorney, Osa Wolff, had brought a narrow public forum banner policy to the council for its consideration, but they sent her back to see if she could come up with a city speech policy that could allow for sponsorship. At the behest of the groups such as the Orinda Association and the Orinda Chamber of Commerce, she returned to the council with an even broader public forum policy proposal, which tried to accommodate a request by Saint Mary's College, to put up banners in Orinda to welcome students and their families to the new school term in the fall.

The council decided to deal with the two banner applications on April 18 on an ad hoc basis, before moving on to consider the policy issue. The application by the Orinda Association to again have banners for the annual Fourth of July Parade, including sponsorship, was approved unanimously, but the application by Saint Mary's College passed by a vote of 3 to 1, with council member Dean Orr voting against it. Mayor Eve Phillips was not present.

The council then agreed that it was too much to ask the attorney to find a way to craft a city speech policy that would allow for sponsorship, something Wolff's research to date indicated does not exist. Lafayette has a city speech banner policy, as do many nearby communities. Moraga has no banner policy. San Francisco has a public forum policy. The council asked Wolff to tighten up the restrictions on the public forum policy brought to the council last year, instead of adopting the broader policy currently recommended by staff.

The council wants a policy that is limited to banners in support of events held in, or at least partially in, Orinda and that excludes banners in support of entities not associated with events. It also wants to see restrictions on provisions such as the minimum and maximum number of banners allowable. Wolff will draft a final policy and a resolution and bring it back to the council. Once the policy is in place, staff will be able to administer individual applications without further consideration by the council. However, the council did decide that they will revisit the policy as a whole in 24 months to see if it needs to be amended or revoked.

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