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CITY OF PEMBROKE PINES
INTER-OFFICE CORRESPONDENCE

MEMORANDUM NO. 2025-064

TO: Mayor Angelo Castillo
Members of the City Commission

CC: Charles F. Dodge, City Manager
Jonathan Bonilla, Assistant City Manager
Christina Sorensen, Assistant City Manager and Director of
Recreation and Cultural Arts

FROM: Samuel S. Goren, City Attorney *SSG*
Paul B. Hernandez, Assistant City Attorney *PBH*
Susannah Nesmith, Assistant City Attorney *SN*

DATE: April 4, 2025

RE: City of Pembroke Pines ("City") / Holiday Displays

This memorandum shall serve as a response to the Mayor's inquiry regarding holiday displays and a recommended policy.

Brief Answer

We are of the opinion that the City should adopt an official policy that formalizes the City's long-standing practice of the City Manager or City Manager's designee having final authority over the selection of all seasonal and holiday displays on City property, including in the lobby of City Center. As City Center's event spaces are managed by ASM through an agreement with the City, this policy will not impact the decorations, symbols, or other displays within City Center resulting from the private contractual relationship between ASM and third party companies temporarily utilizing City Center as an event space.

Analysis

As detailed in CAO Memorandum No.2024-140, dated December 19, 2024, the City may sponsor a religious ceremony, such as a Menorah lighting, on City property at the request of an outside entity. When it does so, however, it must be open to also sponsoring similar ceremonies from any and all other faiths, and potentially celebrations by non-religious groups that may be

requested. The First Amendment prohibits the City from choosing one religion over all others. It also prohibits rejecting or discriminating against any religion or group of religions.

When the City opens up a particular space to one religious ceremony, it potentially creates a public forum where all religious ceremonies must be accommodated. *See Shurtleff v. City of Boston*, 596 U.S. 243 (2022). In the *Shurtleff* case, a well-meaning City employee declined to allow a religious group to raise a flag on Boston's main flag display, even though many other groups, including a credit union and a rival city's sports team had been allowed to raise their flags there. *Shurtleff*, at 249. The employee believed that permitting the religious flag might violate the Establishment Clause of the First Amendment, perhaps by somehow suggesting that the City of Boston had selected this religion as its official religion. *Id.*, 250. However, the Supreme Court found that Boston violated the freedom of speech provision of the First Amendment – *and* the Establishment Clause – because the City's permissive flag raising policy had created a public forum where Boston was extremely limited in the ways it could restrict or control the flags raised on its pole and where Boston was absolutely prohibited from regulating a religious flag display. *Id.*, 248.

Yet, “when the government speaks for itself, the First Amendment does not demand airtime for all views.” *Shurtleff*, at 247.

Governments are permitted to speak for themselves, choosing their own messages, to the exclusion of other messages. In order to do this, the courts have said that the government must control the message. *See McGriff v. City of Miami Beach*, 84 F.4th 1330, 1334 (11th Cir. 2023). In addition to control, courts ask if the type of speech has typically communicated government messages and whether the public would reasonably believe the government has endorsed the speech. *Id.*, at 1335. In the *McGriff* case, the court found that the City of Miami Beach could refuse to display an artwork it had purchased because the City manager decided that it did not convey a message the City wanted to convey. *Id.*, 1335-1336. This decision to control a particular expression of a particular viewpoint passed the three-part test of government speech because Miami Beach controlled the artwork, the public would reasonably believe that artwork displayed on City property was endorsed by the City and government artwork has historically been seen as conveying a government message. *Id.* 1336. Similarly, the Supreme Court found that a local government could reject the donation of a religious monument for a city park, even though a monument to the Ten Commandments already stood in that park. *See Pleasant Grove City, Utah v. Summum*, 555 U.S. 460 (2009). By the same token, a government can refuse to allow a group that plans to fly a Confederate flag to participate in the government's parade, because the government controls the parade, the public views a government parade as carrying a message endorsed by the government and government parades are historically linked to the government's message. *Leake v. Dirnkard*, 14 F. 4th 1242 (11th Cir. 2021).

Here, the City of Pembroke Pines has a long-standing tradition of City staff determining which displays will be featured at City properties throughout the year. The City's active control over these seasonal displays, one test of whether the decorations are government speech, combines with the fact that staffers have always chosen the displays, ensuring that the public sees them as government speech and that they historically have been accepted as conveying a government message. The displays currently represent classic government speech and should remain as such.

Conclusion

In our opinion, the best way to ensure that the City's holiday and seasonal displays on City property continue to meet the definition of government speech is to formalize the City's current practices, which give the City administration the discretion to direct the displays. Any groups that wish to use City spaces such as City Center for their private purposes may do so by renting that space, to the extent that ASM can accommodate them.