

HOLIDAY DISPLAYS: LEGAL CONSIDERATIONS



MMA

Massachusetts
Municipal
Association

**PRESENTED BY JANELLE M. AUSTIN, ESQ.
NOVEMBER 18, 2024**

KP | LAW



THE LEADER IN PUBLIC SECTOR LAW
ATTORNEYS AT LAW

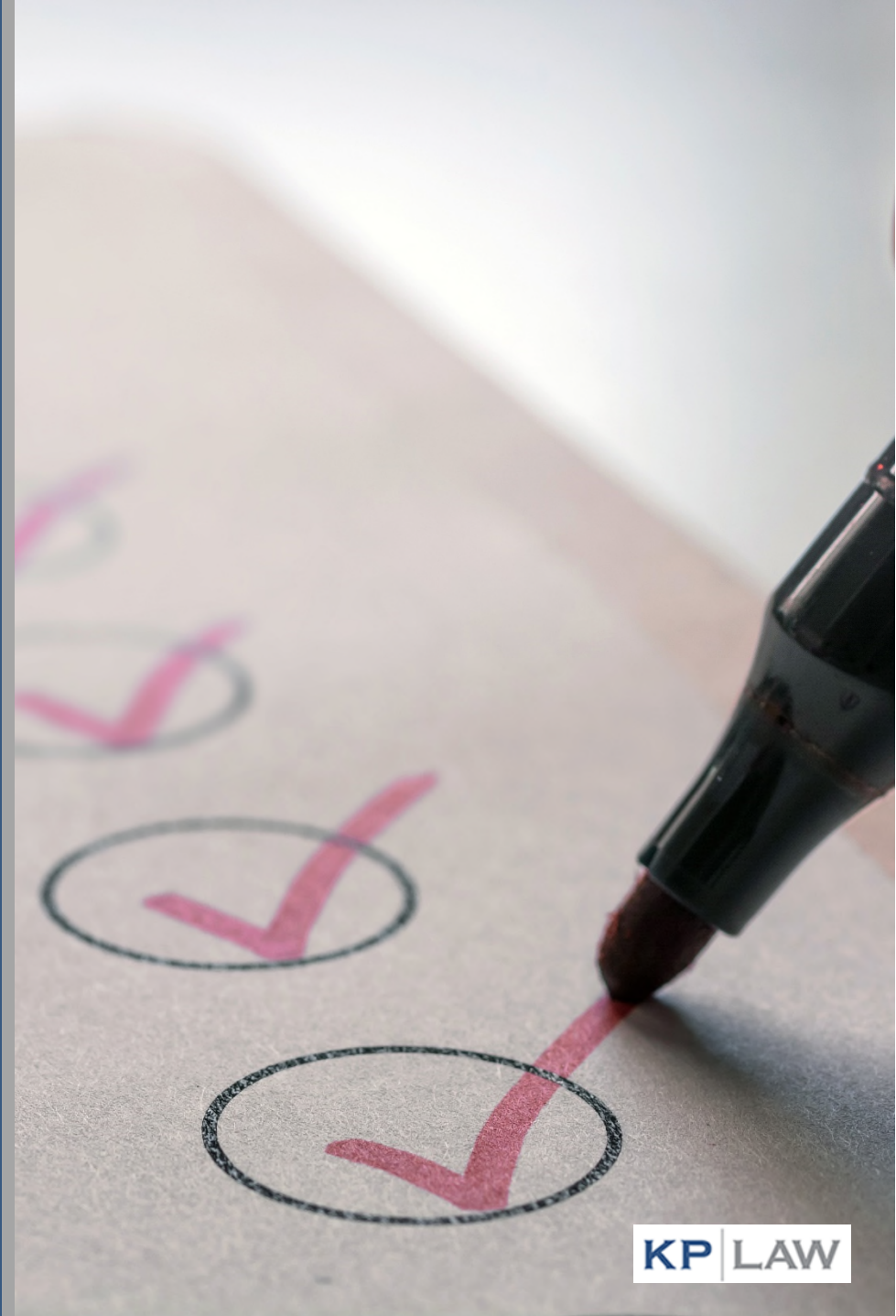
© 2024 KP LAW, P.C. | ALL RIGHTS RESERVED.

Disclaimer

This information is provided as a service by KP Law, P.C. This information is general in nature and does not, and is not intended to, constitute legal advice. Neither the provision nor receipt of this information creates an attorney-client relationship between the presenter and the recipient. You are advised not to take, or to refrain from taking, any action based on this information without consulting legal counsel about the specific issue(s).

Agenda

- Legal Standards and Tests
- Key Supreme Court Cases
- Recent Changes in the Law
- Practical Implications and Guidelines for Holiday Displays
- Implementation Strategies
- Recommendations
- Avoiding Pitfalls
- Policy Considerations
- Questions?



First Amendment to the United States Constitution

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...”

- These clauses mandate government neutrality concerning religion, prohibiting any government action that endorses one religion over another or inhibits religious expression.
- Holiday displays on public property often raise constitutional questions, including Establishment Clause and Free Speech Considerations.



Important Legal Standards and Tests



- **Lemon Test (*Lemon v. Kurtzman*):** A government action is constitutional if it:
 - Has a secular legislative purpose.
 - Its principal or primary effect neither advances nor inhibits religion.
 - Does not foster an excessive government entanglement with religion.
- **Endorsement Test (*Lynch v. Donnelly*):** This test examines whether a reasonable observer would perceive the government action as endorsing or disapproving of religion.
- **Coercion Test (*Lee v. Weisman*):** Assesses whether the government action coerces individuals to support or participate in religion or its exercise.

Key Supreme Court Cases

Lynch v. Donnelly (1984)

- Facts: A city included a nativity scene in its annual Christmas display in a public park.
- Ruling: The Supreme Court held that the display did not violate the Establishment Clause because it had legitimate secular purposes, such as celebrating a national holiday and depicting its historical origins.
- Significance: Context matters; inclusion of secular symbols alongside religious ones can mitigate claims of endorsement.

County of Allegheny v. ACLU (1989)

- Facts: Two holiday displays were challenged: a nativity scene inside a courthouse and a menorah outside a government building alongside a Christmas tree.
- Ruling: The nativity scene was unconstitutional due to its solitary display in a prominent location, suggesting government endorsement of Christianity. The menorah display was deemed constitutional because it was presented alongside secular symbols.
- Significance: The context and setting of religious symbols are crucial in determining constitutionality.

Key Supreme Court Cases (Cont.)

Capitol Square Review and Advisory Board v. Pinette (1995)

- Facts: The Ku Klux Klan sought to display a cross in a public square traditionally open to private displays.
- Ruling: The Court held that denying the Klan's request violated the Free Speech Clause, emphasizing that private religious expression in a public forum is protected.
- Significance: Governments cannot discriminate against private religious speech in public forums.
- See also Shurtleff v. Boston (2022): Flag case at City Hall.

Van Orden v. Perry (2005)

- Facts: A Ten Commandments monument was placed on the Texas State Capitol grounds among other historical markers.
- Ruling: The display was constitutional due to its passive use and historical context.
- Significance: Historical significance can play a role in the constitutionality of religious displays.

Key Supreme Court Cases (Cont.)

McCreary County v. ACLU (2005)

- Facts: Framed copies of the Ten Commandments were displayed in county courthouses.
- Ruling: Unconstitutional because the displays lacked a secular purpose and were intended to promote religion.
- Significance: The government's purpose and intent are critical factors.

American Legion v. American Humanist Association (2019)

- Facts: A 40-foot tall World War I memorial cross stood on public land in Maryland.
- Ruling: The Supreme Court upheld the constitutionality of the cross, emphasizing its historical context and the passage of time, which had given it a secular meaning as a war memorial.
- Significance: Introduced a more lenient approach for longstanding monuments with religious symbolism, suggesting that historical context and tradition can justify certain displays.



Recent Changes in the Law

The American Legion v. American Humanist Association decision in 2019 marked a **significant shift** in how the Court approaches Establishment Clause cases, particularly concerning religious symbols and monuments on public property. The Court moved **away** from the strict application of the Lemon Test, especially for longstanding displays, and emphasized:

Presumption of Constitutionality for Historical Monuments: Older monuments, symbols, and practices are less likely to be perceived as endorsements of religion due to their historical context.

Contextual Evaluation: Greater emphasis on the specific history and context surrounding the display.

Reduced Reliance on the Lemon Test: The decision signals a move toward a more nuanced analysis rather than strict adherence to previous tests.

Recent Changes in the Law (Cont.)

- The Supreme Court officially signaled it would abandon the traditional *Lemon* Test in Kennedy v. Bremerton School District (2022):
 - “In place of *Lemon* and the endorsement test, this Court has instructed that the Establishment Clause must be interpreted by ‘reference to **historical practices and understandings.**’”
 - Reference to historical practices regarding holiday displays, as well as the context of current displays, will be the deciding factors in any challenge.

Practical Considerations for Holiday Displays



Guidelines for Compliance

- **Secular Purpose:** Ensure the primary purpose of the display is secular, such as celebrating cultural diversity or the holiday season in general.
- **Inclusivity:** Incorporate symbols from multiple cultural and religious traditions to promote inclusivity and reduce the perception of endorsing a specific religion.
- **Context Matters:** Place religious symbols in a broader context that includes secular elements (e.g., winter landscapes) to emphasize the secular nature of the display.
- **Avoid Exclusive Religious Messaging:** Do not feature religious symbols or messages in isolation, which could be perceived as government endorsement of that particular religion.
- **Consider Historical Significance:** Longstanding traditions may be given more latitude but should still be evaluated for current perceptions of endorsement- this is a very fact specific analysis.

Examples



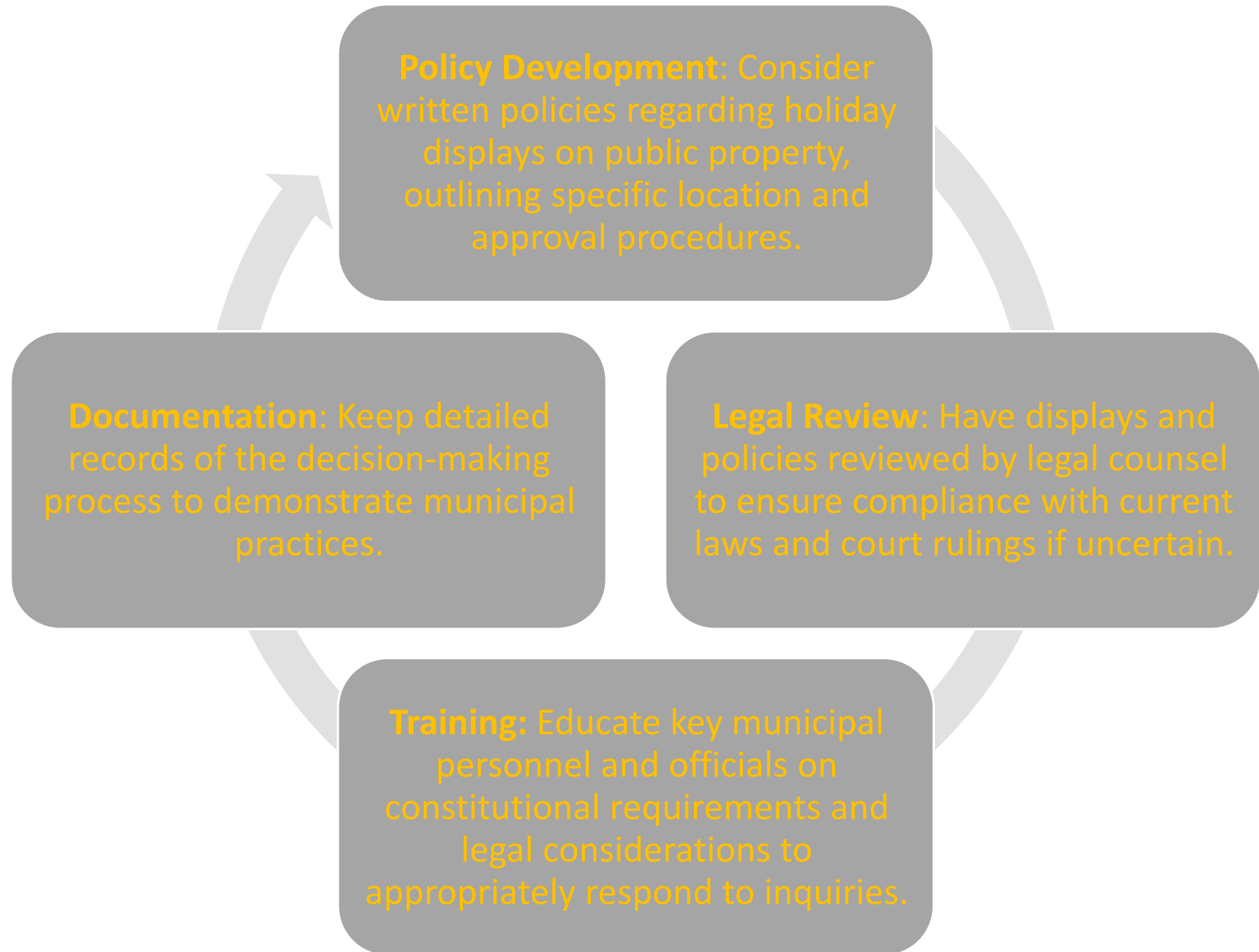
Examples

- **Varied Displays:** A holiday display featuring a Christmas tree, menorah, and Kwanzaa decorations alongside secular decorations like lights and snowmen.
- **Secular Themes:** Decorations focusing on winter or themes of peace and unity without religious symbols.
- **Cultural Exhibits:** Educational displays that provide information about various cultural and religious holiday traditions.

Unacceptable Examples

- **Isolated Religious Symbols:** A standalone religious symbol without accompanying secular or other religious symbols.
- **Religious Messaging:** Signs or banners that expressly promote religious doctrine or scriptures.
- **Exclusion of Other Traditions:** Highlighting one particular religion to the exclusion of others.

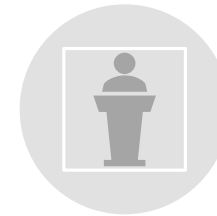
Implementation Strategies & Guidelines



Avoiding Common Pitfalls



Last-Minute Changes: Plan ahead to prevent rushed decisions without careful consideration for holiday celebrations.



Neutrality: Ensure individuals' personal beliefs do not influence official actions.



Collaboration: Learn from other municipalities' experiences and evaluate current court rulings.



Prepare for Inquiries: Develop protocols for responding to complaints or inquiries.

Policy Considerations

1. **Purpose:** Establish guidelines that respect constitutional requirements and promote inclusivity.
2. **Scope:** Consider the scope of holiday displays on municipal property at designated locations.
3. **Definitions:** Clarify key terms such as location and municipal decision makers.
4. **Guidelines:** Outline acceptable content and presentation.
5. **Procedures:** Detail the approval process and criteria.
6. **Responsibilities:** Define roles of municipal staff.
7. **Appeals and Complaints:** Provide mechanisms for addressing concerns or inquiries.

Conclusion

Key Takeaways

- Balance community traditions with constitutional mandates.
- Context, intent, and inclusivity are critical.
- Proactive planning minimizes legal issues.

Final Thoughts

- Thoughtful holiday displays are largely unproblematic, unless the municipality discriminates on the basis of viewpoint/messaging.



Any questions?

Janelle M. Austin, Esq.

KP Law, P.C.

101 Arch Street, 12th Floor

Boston, MA 02110

(617) 556-0007

jaustin@k-plaw.com

www.k-plaw.com

KP | LAW



THE LEADER IN PUBLIC SECTOR LAW

ATTORNEYS AT LAW

© 2024 KP LAW, P.C. | ALL RIGHTS RESERVED.