




# City of Lowell - Law Department

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## MEMORANDUM

**TO:** Thomas A. Golden, Jr., City Manager 

**FROM:** Corey F. Williams, First Assistant City Solicitor

**DATE:** March 9, 2023

Alethea C. Dys-Peirce  
Assistant City Solicitor

**SUBJECT: MOTION RESPONSE:** Req. City Mgr. have the Law Department provide a Recommendation to the City Council on Possible Updates to the Flag Raising Policy in Response to the recent Supreme Court Decision of *Shurtleff v. Boston*.

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The City has a longstanding practice of raising national flags of foreign nations and flags associated with nationally recognized celebrations or days of observance, such as Juneteenth, Earth Day, or Pride Month. The City does not currently have a written policy governing applications for flag raisings.

Last year, a private organization, the United State Federal Chaplain group, submitted a Flag Raising Application with the City of Lowell. The application was approved and the flag, white with a cross in the upper left corner, was raised outside City Hall as part of a ceremony. This application was not in-keeping with the City's past practice in that it celebrated the work of a private third-party.

Recently the Supreme Court overturned decisions from the Federal District Court and the First Circuit Court of Appeals upholding Boston's decision to reject an application for a Christian flag. In its decision the Court held that Boston had opened flag raisings to "all applications," including private third-parties such as a local community bank. Moreover, Boston never asked for a description of the flags prior to a flag raising. Accordingly, the City could not argue that this was a case involving protected government speech.

Notwithstanding the recent US Federal Chaplain flag raising, Lowell's flag raising practice is markedly different from Boston's past practice. Here, flag raisings have been limited to foreign nations and nationally recognized events. Even Lowell's form asks for the country of origin and a description of the flag.

In light of the Supreme Court's recent decision, it is recommended that the City enact a written flag policy stating that "flag poles are not intended to serve as a forum for free expression by the

public.” The policy should list all approved flags (flags of foreign nations and nationally recognized celebrations or observances such as Juneteenth, Earth Day, the “Rainbow flag” for Pride Month; and the Afro-American Flag celebrating Black History Month) all as expression of the City’s official sentiments.”