MEMORANDUM

TO: Mayor and City Council
FROM: Jennifer B. Utter, Assistant City Attorney
DATE: April 22, 2022
RE: Street Light Pole Banner Policy-Proposed for Council Review and Approval

City Attorney’s Office recommendation: Approve Proposed Policy as written.

Background

Over the course of the last few years, the City of Rapid City has authorized exclusive use of certain City street light poles to hold private party banners. Such authorization has created and opened a “public forum”, implicating First Amendment freedoms. This Council previously requested that the City Attorney’s Office research and develop a uniform policy to govern the use of City street light poles by private groups or individuals. City Attorney staff members have conducted legal research, met numerous times with
internal and external stakeholders (Engineering, Streets, Community Development, Public Works, Parks and Recreation, and Veteran’s Banner Project representatives (past exclusive user) for purposes of information gathering and to identify and discover factors which would affect the implementation of such a proposed policy.

Authority

The City has authority pursuant to RCMC 17.50.080.S.2 to adopt a policy governing the use of City street light poles for banner display, if the City Council continues to maintain the public forum it has created. The Code specifies as follows:

RCMC 17.50.080.S.2:

2. The City Council may authorize the placement of banners on public light poles and structures which promote the city, any educational institutions within the city, or which promote community events, activities and celebrations. Such banners may not convey a commercial message, but may identify sponsors. The City Council may impose conditions upon which its authorization to mount banners under this section has been given, including the length of time the banner(s) may be located in the authorized location. The City Council may also establish rules and administrative procedures for the mounting of banners under this section and may further enter into agreements with public or private groups to mount and maintain banners on light poles or other public structures within the city.

Proposed Policy

Attached is a proposed Street Light Pole Banner Policy for your review and consideration.
Highlights:

- Applications accepted no later than thirty (30) days, and no earlier than six (6) months, ahead of requested initial display time block.

- Eligible applicants would have the ability to request display time blocks of sixty (60) days maximum in various “zones” within the City.

- Eligible applicants would be able to renew for subsequent time periods if there were no other applicants.

- Recommended zones included in this proposed policy have been previously reviewed for traffic safety and other concerns. These zones are now recommended to you by City Engineers and Public Works.

- This policy permits Public Works personnel to amend available zones without Council action, recognizing the variable factors that may affect safe installation and usage of banners on light poles, such as emergency or scheduled repairs to certain light poles or streets.

- Applicants would have an opportunity to renew for additional display time, in one month increments, if there are no other applicants.

- This policy reserves the holiday season for City use, which is permitted, as “government speech” and does not create a public forum.

- The proposed permit fee is $100 for each zone, which includes a “right of way” permit, as there are traffic blockages during installation and take-down.

- This policy would authorize issuance of permits at a central location, City Hall, Right of Way permit desk.

- The City Attorney’s office will work with Engineering to develop an online “fillable” application and usage agreement which will apply to all users, similar to the new Utility Permit Request developed by the Engineering Department and found at our City website: https://www.rcgov.org/index.php?option=com_docman&view=download&alias=23963-fiber-gas-electrical-phone-and-communications-utility-permit-request&category_slug=engineering-services&Itemid=149
Conclusion

The goal of this policy is to provide an opportunity for eligible applicants to participate in exercising First Amendment rights within the public forum created by the City’s permissible use of street light poles for purposes of banner displays. The proposed policy also preserves the City’s ability to address potential banner display issues concerning the health, safety, and welfare of Rapid City residents and visitors. Thank you for your consideration of this proposed policy. City Attorney personnel and Veteran’s Banner Project representatives will be available to comment as appropriate and helpful.