



ESTABLISHING A POLICY FOR THE PROPER DISPLAY AND HANDLING OF FLAGS AT CITY FACILITIES

General Services Department

Inclusiveness, Community Engagement
& Governmental Affairs Committee

November 2, 2022

BACKGROUND

Historically, the City of Riverside has displayed flags in conformance with Federal and State statutes.

- The Proposed Flag Policy establishes formal guidelines and procedures to handle and display the Flag of the United States, the State of California Flag and the City of Riverside Flag.
- The Proposed Flag Policy also provides guidelines pertaining to commemorative flags which identify with a specific date, historical event, cause, or group of people.



BACKGROUND

On August 4, 2021, the Inclusiveness, Community Engagement & Governmental Processes Committee discussed:

1. Establishing a policy for the proper display and handling of flags at City facilities, and
2. Display of commemorative flags.

After discussion, the Committee requested staff return with clarification on:

1. Whether the City can legally restrict display of certain commemorative flags (content-based restriction); and
2. The approval process for display of commemorative flags.



BACKGROUND

On December 1, 2021, staff returned to the Committee with a presentation on:

1. The Government Speech Doctrine as it applies to government expression, and
2. The proposed approval process for commemorative flags.

BACKGROUND

After discussion on December 1, the Committee requested staff return with additional information on:

1. City of Riverside flag redesign and color significance;
2. Whether restriction on display of flags of other nations also applies to tribal nations;
3. Which cities have raised the Pride Flag in California and across the nation;
4. What other commemorative flags are raised in California and across the nation; and
5. Why language “...incorporating themes of diversity, equity, social justice and inclusion...” was removed from the draft policy pertaining to commemorative flags.

BACKGROUND

The development of the draft policy was ultimately paused while the case *Shurtleff v. City of Boston*, was reviewed by the Supreme Court of the United States.

1. On May 2, 2022, the United States Supreme Court released its ruling.
2. While it struck down Boston's commemorative flag policy, it provided guidance on the Government Speech Doctrine, which will be covered later in the presentation.

COMMEMORATIVE FLAGS APPROVAL PROCESS

1. In January of each year, the City Council will consider the display of commemorative flags for the upcoming year.
2. After an initial agendized discussion, staff will return to a subsequent City Council meeting with a resolution supporting the City's display of the flag(s) chosen.
3. A majority of the City Council must vote affirmatively for said resolution.



COMMEMORATIVE FLAGS APPROVAL PROCESS

1. In addition to the annual consideration, a Councilmember may, at any time during the year, suggest the display of additional flags.
2. Consideration would be a two-step process where on agenda the Council considers the request, and if supported by a motion approved by a majority of the Councilmembers, staff would return with a formal resolution authorizing display of a commemorative flag.
3. A majority of the City Council must vote affirmatively for said resolution.



CITY OF RIVERSIDE FLAG DESIGN

1. On December 8, 2020, the City Council approved a design developed by a local graphic designer with input from Riverside students.
2. The design features a gold bell, symbolizing the California missions, along with a rain cross, symbolizing the Native Americans who were the first to live in what is today Riverside.
3. The wavy powder blue line represents the Santa Ana River, and the wavy gold line represents the prominent hills around the city.



NATIONS AND TRIBAL NATIONS

There are no prohibitions on the display of flags of other nations, including Tribal Nations. However:

1. The Federal Flag code, as set forth in Title 4, United States Code, Chapter 1 does regulate the manner in which such flags may be flown.
2. In general, federal law provides that the flag of the United Nations, or any other national or international flag shall not be displayed equal, above, or in a position of superior prominence or honor to, or in place of, the flag of the United States.

CITIES DISPLAYING COMMEMORATIVE FLAGS

Numerous cities across the state and nation display commemorative flags. Most commonly displayed:

1. 47 cities across the nation displaying the Rainbow Pride Flag (39 in California);
2. 14 cities across the nation displaying the Progress Pride Flag (11 in California);
3. 14 cities across the nation displaying the Juneteenth Flag (1 in California)

*See Exhibit B for detail.



REMOVAL OF COMMEMORATIVE FLAG POLICY LANGUAGE

Under the proposed flag policy, commemorative flags may be displayed at City Hall and potentially other City facilities which may accommodate additional flag(s) upon City Council action, consistent with the City's vision, mission and strategic plan.

- The City's vision, mission and strategic plan is not limited to the themes of "diversity, equity, social justice and inclusion" and therefore staff revised the policy to reference the Council's adopted City's vision, mission and strategic plan, which includes but is not limited to diversity, equity, social justice and inclusion.



GOVERNMENT SPEECH DOCTRINE

The Government Speech Doctrine, defined by the United States Supreme Court, establishes that a government organization, such as the City of Riverside, may advance its own expression without requiring viewpoint neutrality when the government itself is the speaker, so long as its expression does not show religious preference or encourage a certain vote in an election.



ANALYSIS OF RULING IN SHURTLEFF V. CITY OF BOSTON

1. The Supreme Court found that Boston's policy did not constitute government speech and therefore it violated the First Amendment when it rejected a flag.
2. Significantly, Boston's policy did not involve review by its Council and every flag request received was granted until the flag in question was rejected.
3. The Supreme Court continued to acknowledge the Government Speech Doctrine.
4. The City can still engage in government speech so long as the speech is adopted as an expression by the City.

RECOMMENDATIONS

That the Inclusiveness, Community Engagement and Governmental Processes Committee:

1. Provide input and guidance regarding establishment of a flag policy.
2. Direct staff to return to City Council for consideration of adoption of a resolution establishing a policy for the proper display and handling of flags at City facilities.