



City of Arts & Innovation

Inclusiveness, Community Engagement & Governmental Processes Committee

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: NOVEMBER 2, 2022

FROM: GENERAL SERVICES DEPARTMENT WARDS: ALL

**SUBJECT: POLICY DEVELOPMENT FOR THE PROPER DISPLAY AND HANDLING OF
FLAGS AT CITY FACILITIES AND FOR THE APPROVAL AND DISPLAY OF
COMMEMORATIVE FLAGS**

ISSUE:

Provide input and guidance regarding establishing a policy for the proper display and handling of flags at City facilities and for the approval and display of commemorative flags.

RECOMMENDATIONS:

That the Inclusiveness, Community Engagement & Governmental Processes Committee:

1. Provide input and guidance regarding establishing a policy for the proper display and handling of flags at City facilities and for the approval and display of commemorative flags; and
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 and for approval and display of commemorative flags.

BACKGROUND:

On August 4, 2021, the Inclusiveness, Community Engagement & Governmental Processes Committee (Committee) received a report and presentation from the General Services Department requesting input and guidance establishing a policy for the proper display and handling of flags at City facilities, and for the approval and display of commemorative flags. After discussion, the Committee requested that staff return to the Committee with clarification on the approval process for display of commemorative flags. In addition, the City Attorney was requested to provide clarification as to whether the City can legally restrict display of certain commemorative flags.

On December 1, 2021, staff returned to the Committee with information on the Government Speech Doctrine as it relates to content-based restrictions. Staff also provided clarification on the

process for consideration and approval of commemorative flags as further outlined in the draft policy. After discussion, the Committee requested that staff return to the Committee with history on the redesign of the City flag and the significance of the flag colors, clarification on whether the flags of other nations, including Tribal Nations, may be displayed under the draft flag policy, information on which cities across the state or nation have raised the Pride flag, and/or other commemorative flag(s), and an explanation as to why language pertaining to “themes of diversity, equity, social justice and inclusion” was removed from the draft policy in regards to commemorative flags.

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. On May 2, 2022, the U.S. Supreme Court released its ruling. While it struck down Boston’s commemorative flag policy, it provided guidance on the Government Speech Doctrine discussed below.

DISCUSSION:

Historically, the City of Riverside has displayed flags in conformance with Federal and State statutes which outline standards for the display of the flag of the United States, the State of California flag, and the City of Riverside flag. When properly displayed, flags are powerful symbols of our shared history, pride, principles and commitment to our nation, state and community.

Following are answers to questions asked by the Committee at the December 1, 2021 meeting:

City of Riverside Flag Redesign

In 2020, the Riverside Unified School District held an artistic contest centered around redesigning the City of Riverside flag, the design of which had not been updated since 1967. The contest was open to all Riverside students, including students from Alvord Unified School District, from grades kindergarten through 12th. The contest yielded many ideas for the redesign for Riverside’s flag, as well as insight into the elements the City flag should incorporate as a representation of Riverside. On December 8, 2020, the City Council approved a redesign developed by local graphic designer David Lauruhn with input received from the students of Riverside. The redesign features a gold bell, which symbolizes the Spanish missions of early California, along with the rain cross, which recalls the Native Americans who were the first to live in what is today Riverside. The wavy powder blue line represents the Santa Ana River, while the gold wavy line represents the prominent hills around the City, among them Mount Rubidoux and Box Springs Mountain.

Display of Flags of Other Nations, Including Tribal Nations

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

Public Entities Displaying Commemorative Flags

Numerous public entities across the state and nation have passed resolutions within the last several years authorizing the display of commemorative flags, including the Rainbow Pride flag, which is a symbol of lesbian, gay, bisexual, transgender and queer pride and social movements,

the Progress Pride flag, which builds on the Rainbow Pride flag by adding a chevron of white, pink, light blue, brown and black to symbolize transgender rights, people of color, and those living with or lost to Human Immunodeficiency Virus Acquired Immunodeficiency Syndrome (HIV AIDS), and the Juneteenth flag, a symbolic representation of the end of slavery in the United States. A summary is attached to this report (see Exhibit “B”).

Removal of “Themes Of Diversity, Equity, Social Justice And Inclusion”

The proposed flag policy establishes formal guidelines and procedures to handle and display the flag of the United States as well as the State of California flag and the City of Riverside flag, in accordance with Federal and State statutes and regulations, including but not limited to: United States Code Title 4, Chapter and California Government Code Section 430 et seq., and compliance with Public Law 94-344 “Federal Flag Code.”

The proposed policy also provides guidelines and procedures pertaining to commemorative flags. A commemorative flag is a flag that identifies with a specific date, historical event, cause, or group of people. 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.

Overview Of the Draft Flag Policy

The proposed flag policy establishes the order of the flag display and includes the requirement that, when a commemorative flag is added, it will be displayed in a position of honor following the aforementioned flags unless otherwise directed by the City Council and to the extent such protocol does not conflict with Federal or State law. Key points of the draft flag policy are outlined in the following sections.

Proper Flag Handling

1. Flags are to be raised and lowered by hand.
2. Flags are to be lowered slowly and with dignity.
3. The flag of the United shall be hoisted first and lowered last.
4. Flags must not touch the ground or anything beneath it.
5. When no longer in good condition, flags are to be destroyed in a dignified way, preferably by burning.

Proper Flag Display

1. Flags are to be flown from sunrise to sunset, unless properly illuminated.
2. Flags should not be displayed during inclement weather unless an all-weather flag is used.

Proper Placement of Flags

1. No flag or pennant may be placed above or to the right of the flag of the United States.
2. When displayed on a single pole, the order from top to bottom shall be the flag of the United States, the State of California flag, and if displayed, the City of Riverside flag, followed by a commemorative flag.
3. If the City of Riverside flag is displayed, it must be the design approved by City Council on December 8, 2020.

Flags Flown at Half-Mast

1. Flags may be flown at half-mast only by order of the President of the United States or the Governor of the State of California. Notifications to lower flags to half-mast will be sent via e-mail by the General Services Department.
2. The flag of the United States should be hoisted to the peak for an instant and then lowered to the half-mast position.
3. Before lowering the flag of the United States for the day, it should again be raised to the peak.
4. On Memorial Day, the flag of the United States will be flown at half-mast until noon only, then hoisted to top of staff.

Commemorative Flags Approval Process and General Guidelines

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. If the City Council adopts a resolution to display a commemorative flag, the display of the commemorative flag would be an exercise in government expression, where the City is the speaker.

The City Council may authorize the display of commemorative flags as follows:

1. In January of each year, the City Council will consider the display of commemorative flags for the upcoming year. After an initial agendaized discussion, staff will return to a subsequent City Council meeting with a resolution supporting the City's display of the flag(s) chosen. A majority of the City Council must vote affirmatively for said resolution.
2. In addition to the annual consideration, a Council Member may, at any time during the year, suggest the display of additional flags meeting the criteria of this policy. Consideration would be a two-step process where on an 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. A majority of the City Council must vote affirmatively for said resolution.

3. The specific date, historical event, cause, or group of people being honored must be consistent with the City's vision, mission and ongoing and strategic priorities.
4. Commemorative flags must not be larger than the flag of the United States, the State of California flag, or the City of Riverside flag, and must be on the flagpole beneath the aforementioned flags when flown on the same staff.
5. No more than one commemorative flag may be displayed on a flagpole concurrently.
6. Commemorative flags may be displayed at City Hall and other City facilities which have multiple flagpoles and/or a flagpole tall enough to accommodate multiple flags.
7. Commemorative flags representing political organizations, for-profit organizations, or religious organizations shall be prohibited from being displayed at City facilities.
8. The City will not display a commemorative flag based on a request of a third party or to sponsor the expression from a third party.
9. Commemorative flags shall be displayed for a period of time that is reasonable or customary for the subject that is to be commemorated, but no longer than 30 continuous days, with the exception of Parks facilities and the Memorial Wall which continuously display the Prisoner of War flag.

Analysis of Ruling in SHURTLEFF V. CITY OF BOSTON, REGARDING CITY'S PROPOSED FLAG POLICY

On May 2, 2022, the United States Supreme Court released a new ruling on the Government Speech Doctrine (*Shurtleff v. City of Boston*) regarding display of a commemorative flag on a government flagpole that promotes or otherwise could be construed to be related to religious beliefs. The issue the Supreme Court decided in *Shurtleff v. City of Boston* was whether flying a flag on a flagpole owned by a government entity is government speech. 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. 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. Even though the Boston policy was invalidated, the Supreme Court continued to acknowledge the Government Speech Doctrine. The City can still engage in government speech so long as the speech is adopted as an expression by the City. In light of the *Shurtleff v. City of Boston* decision, the City's draft flag policy was revised to eliminate third party requests for display of commemorative flags to help ensure the policy constitutes Government Speech. While the United States Supreme Court made clear in the *Shurtleff* case that Boston's commemorative flag policy was impermissible, it is still unclear what is permissible for commemorative flags, as such there is still legal risk in the adoption of a commemorative flag policy.

FISCAL IMPACT:

There is no fiscal impact associated with adoption of this resolution.

Prepared by: Carl Carey, General Services Director
Approved by: Kris Martinez, Assistant City Manager
Approved as to form: Phaedra A. Norton, City Attorney

Attachments:

1. Presentation
2. Resolution
3. Exhibit A – Draft Flag Policy
4. Exhibit B – Public Entities Displaying Commemorative Flags