



## **STAFF REPORT TO THE CITY COUNCIL**

**DATE:** Regular Meeting of November 12, 2019

**TO:** Members of the City Council

**SUBMITTED BY:** David Biggs, City Manager  
Nai Saelee, Management Analyst

**SUBJECT:** Consideration of a Flag Policy

### **RECOMMENDATION:**

Receive report, discuss and provide direction, if any.

### **FISCAL IMPACT OF RECOMMENDATION:**

There is no fiscal impact associated with the adoption of the Flag Policy.

### **DISCUSSION:**

At the June 11, 2019 meeting, at the request of Councilmember Bailey, the Council agreed to have a future discussion on a possible flag policy. To facilitate the Council's discussion, staff researched what is in place in a number of other communities and consulted with the City Attorney on the legal requirements for such a policy. This included developing a draft flag display policy for City Council's consideration. The City Council will consider a policy that provides guidance and standards for the display of flags at City facilities, including commemorative flags other than the United States, California, and City flags.

In the past, the City of Hercules has displayed the United States Flag, the California State Flag, and the City of Hercules Flag at the Hercules Civic Center. However, the City does not have a policy regarding the display of such flags or the display of any commemorative flags.

The display of commemorative flags at City facilities can raise First Amendment Free Speech issues, depending on whether the flag is viewed by a court as government speech which is generally permissible, or private speech on public property which in some cases can violate the First Amendment. To avoid being considered private speech on public property, the City should display

commemorative flags only when authorized by the City Council pursuant to an adopted policy that treats commemorative flags as government speech. Under the government speech doctrine, the City may advance its own speech without requiring viewpoint neutrality when the government itself is the speaker, so long as the City does not show religious preference or encourage a certain vote in an election.

The draft Flag Policy outlines the standards and procedures for the display of flags at City facilities. The policy reflects State and Federal laws and the City's practices and customs, and is structured in a manner that treats commemorative flags as government speech. The policy only allows for the display of commemorative flags when the request is brought forth by a City Council member and then authorized by the City Council as an expression of the Council's official sentiments.

**ATTACHMENTS:**

1. Flag Policy