



## **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 Adopting a Flag Policy

### **RECOMMENDATION:**

Adopt a Flag Policy, establishing a policy for the City of Hercules to fly flags at city facilities.

### **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 treated as government speech or private speech on public property. If the City allowed third-party requests to display commemorative flags, the City could be subject to First Amendment scrutiny for allowing private speech on public property. If a flagpole was deemed

to be “limited public forum” under the First Amendment, the City could not pick and choose what commemorative flags to fly, except on a content-neutral basis. However, 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 proposed policy is structured to ensure that any commemorative flags flown at the Civic Center flag poles would be considered City speech.

The draft Flag Policy outline 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 prohibits third-party requests for commemorative flag displays, and 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. This would be done through the two-step process articulated in the Council’s adopted Rules of Procedure.

**ATTACHMENTS:**

1. Flag Policy

## ***City of Hercules, California***

### **Council Policy**

#### **PURPOSE**

To establish guidelines for: (1) the exhibition of the flag of the United States of America, the California State flag, the Hercules City flag from City buildings and (2) the display of ceremonial flags.

#### **POLICY**

It is the policy of the City of Hercules that flags should be displayed in conformance with Federal and State policies, as stated in the Federal “Our Flag” publication of the Congress, House Document No. 96-144; and the State of California Government Code Sections 430 through 439.

In order to establish a policy with respect to the locations and days when the United States of America, California State, and Hercules City flags should be displayed, the following standards should be followed.

The Director of Public Works is responsible for ensuring the proper execution of this policy at all City facilities.

#### **STANDARDS**

##### **A. Federal, State and City Flags**

1. Outdoor flags will be flown at City facilities in the following order of precedence: first, the United States flag; second, the California State flag; third, the Hercules City flag.
2. Weather permitting, flags should be displayed daily in front of or at a location near City Hall, and other public facilities equipped to do so during business hours.
3. Flags should not be displayed in inclement weather. However, all-weather flags may be flown on a 24-hour basis as long as they are illuminated from sunset to sunrise.
4. The Hercules City flag will be flown wherever there are sufficient poles to do so in accordance with #2 above. The City flag may be displayed on the same pole with, and underneath the State flag, whenever the pole is of sufficient height.
5. New City facilities where any flags are to be flown shall be constructed with a sufficient number of poles to allow the City flag to be flown.
6. Indoor City flags shall be displayed in the City Council Chambers.
7. On recognized Federal and/or State holidays, and on other special occasions flags should be flown from all locations listed in paragraph A-2 above.

## ***City of Hercules, California***

8. Flags at all City facilities shall be displayed in accordance with the above standards. However, the City Manager may order flags to be lowered to half-staff including, but not limited to flags of the United States of America and State of California in honor of the death of a City employee killed in the line of duty.

### **B. Ceremonial Flags**

The City's flagpoles are not intended to serve as a forum for free expression by the public. The City shall display commemorative flags only if authorized by the City Council as an expression of the City's Official sentiments. Any such authorization shall be given at a duly noticed meeting of the City Council.

1. The City Council shall only consider a request to display a commemorative flag if the request is made by a member of the Hercules City Council, and approved by the City Council at a City Council, pursuant to the two-step process set forth in the City Council's adopted Rules of Procedure.
2. 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 thirty-one (31) continuous days.
3. Commemorative flags shall be displayed exclusively at the Hercules Civic Center. Such flags may be displayed on the Civic Center flag poles or on one or more buildings at the Civic Center.
4. Commemorative flags displayed on the Hercules Civic Center flagpoles shall be displayed in the last position of honor beneath the City of Hercules Flag, unless otherwise directed by the City Council and to the extent such display does not conflict with federal law, state law, or this policy.