



MEMORANDUM

TO: CITY COUNCIL

FROM: WHITNEY MCDONALD, CITY MANAGER

BY: TIMOTHY CARMEL, CITY ATTORNEY

SUBJECT: DISCUSSION AND CONSIDERATION OF ADOPTION OF RESOLUTION ESTABLISHING A CITY FLAG DISPLAY POLICY AND AUTHORIZING THE DISPLAY OF THE LGBTQ+ PRIDE FLAG AT CITY HALL DURING THE MONTH OF JUNE, 2021

DATE: MAY 25, 2021

SUMMARY OF ACTION:

The proposed Flag Display Policy sets forth the procedures and standards for the display of flags at City facilities, including the display of commemorative flags at City Hall and Heritage Square Park. Contingent upon City Council's adoption of the Flag Display Policy, staff is also recommending that the City Council authorize the display of the LGBTQ+ Pride Flag ("Pride Flag") at City Hall during the Month of June, 2021 in recognition of LGBTQ+ Pride Month.

IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:

There is no financial impact and minimal impact on personnel resources related to having a City Flag Display Policy or authorizing the display of the Pride Flag.

RECOMMENDATION:

Adopt a Resolution adopting the Flag Display Policy and also authorize the display of the Pride Flag at City Hall during the month of June, 2021 in accordance with the proposed Policy. It is also recommended that the Council discuss and consider authorizing the display of the Pride Flag during the month of June, 2021, at Heritage Square Park, where the first Five Cities Pride Celebration occurred in 2019.

BACKGROUND:

At a recent City Council meeting, Council Member Barneich requested that the City Council consider acknowledging Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ+) Pride Month, and authorize the display of the commemorative Pride Flag, which is a LGBTQ+ community rainbow flag at City Hall for the month of June. Mayor Ray Russom concurred in this request. Because the City does not have a flag display policy, this item is being presented for consideration of such a policy, and if approved, also authorize the display of the commemorative Pride Flag during the month of June.

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According to the Library of Congress, Lesbian, Gay, Bisexual and Transgender Pride Month (“LGBTQ+ Pride Month”) is currently celebrated each year in the month of June to honor the 1969 Stonewall riots in New York City. The Stonewall riots were a tipping point for the Gay Liberation Movement in the United States. In the United States, the last Sunday in June was initially celebrated as “Gay Pride Day,” although the actual day was flexible. Eventually, in major cities across the nation, “Gay Pride Day” grew to encompass a month-long series of events. Today, celebrations include pride parades, picnics, parties, workshops, symposia and concerts. Memorials are also held for those members of the community who have been lost to hate crimes or HIV/AIDS. The purpose of the commemorative month is to recognize the impact that lesbian, gay, bisexual, transgender, and queer individuals have had on history locally, nationally, and internationally.

ANALYSIS OF ISSUES:

City Hall has two flag poles and the City of Arroyo Grande has historically displayed the United States Flag, the California State Flag, and the Arroyo Grande City Flag. The United States Flag is also displayed at other City facilities such as the Recreation Services Building at Elm Street Park and at the Corporate Yard. The Police Station also has three flag poles that can be used to display flags. However, the City does not have a Council-adopted policy regarding the display of such flags or the display of commemorative flags, such as the Pride Flag.

Staff has prepared a draft City Flag Display Policy relating to the display of flags and a resolution for its adoption for Council’s consideration. The draft Flag Display Policy outlines the procedures and standards for the display of flags at City facilities, including the display of commemorative flags at City Hall and Heritage Square Park. As set forth in the proposed policy, commemorative flags may be displayed only after being authorized by the City Council and as an expression of the City’s official sentiments. Upon City Council authorization of the display of a commemorative flag, the City would display it at City Hall and/or Heritage Square Park during the designated period.

Contingent upon City Council adoption of the Resolution adopting the Flag Display Policy, staff recommends that the City Council also consider authorizing the display of the Pride Flag in accordance with the proposed Policy.

The City’s flagpoles are not intended to serve as a forum for free expression by the public. Rather, the City’s flagpoles are to be used exclusively by the City, where the City Council may display a commemorative flag as a form of government expression. The City will not display a commemorative flag based on a request from a third party, nor will the City use its flagpoles to sponsor the expression of a third party. Instead, the policy states that such flag, as an expression of the City’s official sentiments, must be requested by a member of the City Council itself.

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The Government Speech Doctrine, defined by the United States Supreme Court, establishes that a government organization, such as the City of Arroyo Grande, 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. Therefore, the City could take action, based on the proposed Policy, to display a commemorative flag as a form of government expression, so long as the commemorative flag does not show religious preference or encourage a certain vote in an election. Consequently, if the City Council authorizes display of a commemorative flag, the display of the commemorative flag would be an exercise of government expression, where the City is the speaker (i.e., government speech).

ALTERNATIVES:

The following alternatives are provided for the Council's consideration:

1. Adopt the Resolution, adopting the City of Arroyo Grande Flag Display Policy, and also authorize the display of the Pride Flag during the month of June.
2. Do not adopt the Resolution or authorize display of the Pride Flag; or
3. Provide other direction to staff.

ADVANTAGES:

Adoption of the Flag Display Policy will clarify practices to be followed for the display of flags on City property, and also provide a procedure for the display of commemorative flags, as may be authorized by the City Council, as an expression of the City Council's official sentiments. Authorizing display of the Pride Flag in recognition of LGBTQ+ Pride Month will commemorate an important social movement and demonstrate the City's commitment to diversity, equity, and inclusivity.

DISADVANTAGES:

No disadvantages have been identified by adoption of a City Flag Display Policy.

ENVIRONMENTAL REVIEW:

The adoption of a Flag Policy is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) which is the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and CEQA does not apply where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment

PUBLIC NOTIFICATION AND COMMENTS:

The Agenda was posted at City Hall and on the City's website in accordance with Government Code Section 54954.2.

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Attachment:

1. Proposed Policy

**CITY OF ARROYO GRANDE POLICY ON
DISPLAY OF FLAGS**

I. Purpose

- A. The Arroyo Grande City Council desires to establish clear guidelines regarding:
1. The outdoor display of the United States Flag, the California State Flag, and the City of Arroyo Grande Flag at City facilities or City-owned or City-maintained flagpoles; and
 2. The outdoor display of commemorative flags at the Arroyo Grande City Hall and Heritage Square Park.
- B. In adopting this Policy, the City Council desires to reflect the dignity of the flags flown on flagpoles or displayed at City-owned or City-maintained facilities, as well as the role of the Arroyo Grande City Hall as an inclusive gathering location and local symbol of government and democracy.
- C. In adopting this Policy, the City Council declares that flagpoles owned or maintained by the City of Arroyo Grande are not intended to serve as a forum for free expression by the public, but rather as a non-public forum for the display of the United States, State of California, City of Arroyo Grande, and any commemorative flag authorized by the City Council as an expression of the City Council's official sentiments (government speech).

II. Policy

- A. Conformance with Federal and State Regulations. Flags shall be displayed in accordance with Federal and State statutes and regulations, including, but not limited to, United States Code, Title 4, Chapter 1 and California Government Code section 430 et seq., and this Policy.
1. Per California Government Code section 431(a), the Flag of the United States and the Flag of the State of California shall be prominently displayed upon or in front of public buildings of the City.
 2. Per California Government Code section 434.7, any Flag of the United States or Flag of California that the City purchases must be made in the United States.
 3. The United States Flag may only be flown at half-staff in accordance with the guidelines set forth at <https://www.usa.gov/flag>. The State of California Flag shall be flown at half-staff if the United States Flag is flown at half-staff or on order of the Governor.
- B. City Facilities other than the Arroyo Grande City Hall. At facilities that the City owns or maintains (other than facilities maintained by other governmental entities), there may be one flagpole where the United States Flag shall be flown and the State of California flag may be flown as described in Section II.

C. Arroyo Grande City Hall.

1. There shall be flagpoles at the Arroyo Grande City Hall to fly the following flags in the manner described below: Flag of the United States, Flag of the State of California, Flag of the City of Arroyo Grande, and any approved commemorative flag.
2. The City of Arroyo Grande Flag shall fly at half-staff if either the United States or California Flag is at half-staff. The Mayor may order the City of Arroyo Grande Flag to fly at half-staff at the death of a current or former City Council Member or current City staff member or a historically significant member of the community.
3. Commemorative Flag.
 - a. As expression of the City's official government speech, the City Council may authorize the display of a commemorative flag to fly at the Arroyo Grande City Hall and the Heritage Square Park flagpoles only.
 - b. The City Council shall only consider a request to display a commemorative flag if the request is made by a member of the Arroyo Grande City Council and another City Council member agrees to place the discussion to authorize such display on the agenda for a regular or special City Council meeting. Requests to fly a commemorative flag by members of the public will not be considered.
 - c. At a noticed and agendized City Council meeting, a majority of Council Members must agree to display the commemorative flag.
 - d. 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 (30) consecutive days.
 - e. Commemorative flags must be either purchased by the City or temporarily donated for the City's use and must be clean, without holes and tears, and be made of an all-weather fabric. Commemorative flags must be the same size or smaller than the United States and California flags that are flown. The City will not be responsible for the condition of the commemorative flag once flown.
 - f. If any other flag is flown at half-staff, the commemorative flag will also be flown at half-staff.
 - g. A "commemorative flag" as defined in this Policy shall mean a flag that identifies with a specific historical event, cause, nation or group of people that the City Council choses to honor or commemorate consistent with the City's mission and priorities. The following are not allowed as Commemorative Flags and will not be considered by the City Council:

- i. Flags of a particular religious movement or creed to avoid the appearance of City government endorsing religion or a particular religious movement or creed;
- ii. Flags of a political party to avoid the appearance of City government endorsing a political party; and
- iii. Flags advocating a certain outcome in an election.

III. Procedures

- A. No other flag shall be placed above the United States Flag and no other flag shall be larger than the United States Flag. Other flags may be flown at the same height and in the same size, in accordance with this Policy. Where both the United State Flag and the California State Flags are flown, they shall be of the same size.
- B. Flags should be hoisted briskly and lowered ceremoniously. The United States Flag should be hoisted first and lowered last.
- C. Flags shall be displayed during operating hours on all days on which the City is open for business, and on national and State holidays. Flags may be displayed twenty-four (24) hours a day as long as they are illuminated during darkness.
- D. Flags shall not be displayed during inclement weather, unless all-weather flags are used and are illuminated during darkness.
- E. When flags are displayed on a single pole, the order from top to bottom shall be: the United States Flag, the California State Flag, and, if displayed, the City of Arroyo Grande Flag.
- F. When the flags are flown from adjacent flag poles, the United States Flag shall be flown at the highest point of honor, which is the furthest point to the left from the standpoint of the observer ("the flag's right").
- G. When a flag is displayed at half-staff, it shall first be hoisted to the peak for a moment and then lowered to half-staff position. Before being lowered at the end of the day or when taken down, the flags shall again be hoisted to the peak for a moment and then fully lowered.

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