

## ADMINISTRATIVE POLICIES AND PROCEDURES

**SUBJECT:** DISPLAY OF FLAGS AT CITY FACILITIES

**EFFECTIVE:** \_\_\_\_\_, 2021

### 1. PURPOSE:

The purpose of this Policy is to establish guidelines for the display of flags at City facilities. In adopting this Policy, the City Council declares that City flagpoles or other areas where flags may be displayed at City Facilities are not intended to and shall not serve as a forum for free expression by the public.

The display of flags at City Facilities is solely intended to serve as an expression of the City's speech and its official sentiments. This Policy applies to all City Facilities and employees, officers, and agents of the City.

### 2. DEFINITIONS:

A. "California Flag"

The State Flag of California (also known as the "Bear Flag"), as defined by California Government Code Section 420.

B. "City Facility"

Any real property that is owned, operated, or maintained by the City.

C. "City Flag"

The official flag of the City of Merced, as defined by California Government Code Section 435.

D. "Commemorative Flag"

Any flag other than the U.S. Flag, the POW/MIA Flag, the California Flag, or City Flag.

E. “Military Flag”

The official flag of each of the five (5) uniformed services. The Military Flag will be displayed in accordance with the Order of Precedence determined by the Department of Defense.

F. “POW/MIA Flag”

The flag of the National League of POW/MIA Families, as defined by California Military and Veterans Code Sections 1830 and 1831.

G. “U.S. Flag”

The flag of the United States, as defined by 4 USC 1.

**3. COMPLIANCE APPLICABLE LAW:**

Flags shall be displayed at City Facilities in accordance with this Policy and with applicable federal, state, and local rules, including but not limited to, Title 4, Chapter 1 of the United States Code and Sections 430 through 439 of the Government Code.

**4. DISPLAYING THE U.S. FLAG, CALIFORNIA FLAG, CITY FLAG AND POW/MIA FLAG:**

A. The City shall display the U.S. Flag and the California Flag at City Facilities.

B. The City Manager may display the City Flag at City Facilities.

C. The City Manager may display Military Flags at City Facilities to show our pride in our military and the service branches they symbolize.

D. The City Manager may display the POW/MIA Flag at City Facilities as a symbol of the City’s commemoration and recognition of the sacrifices of those members of the United States Armed Forces, as well as nonmilitary personnel and civilians from the United States, who remain prisoners of war or are missing in action.

**5. DISPLAYING COMMEMORATIVE FLAGS:**

A. The City may display Commemorative Flags at City Facilities as “government speech” (as that phrase is used in *People for the Ethical Treatment of Animals, Inc. v. Glittens* (2005) 414 F.3d 23), only to the extent

that the City Council has adopted a resolution to authorize City staff to implement the communication of a particular City message, in accordance with this Policy, or as specifically set forth herein. The display of Commemorative Flags shall solely serve as expression of the City's official sentiments and shall not create or serve as a forum for public expression. The City shall not display any 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.

B. In January of each year, the City Council will consider the display of Commemorative Flags for the upcoming year. 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. A majority of the City Council must vote affirmatively for said resolution.

C. 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 will be conducted in accordance with Administrative Policies and Procedures C-1.

D. Commemorative Flag(s) are authorized to be displayed at Bob Hart Square unless otherwise approved by City Council.

E. No more than one Commemorative Flag will be displayed at a time.

F. The dates for display of a Commemorative Flag shall be reasonably related to the City message that is intended to be communicated.

G. The resolution authorizing the display of a Commemorative Flag shall document compliance with all elements of this Policy, including the City message to be communicated and the dates for display of the flag.

H. The City Manager may display a Commemorative Flag for one of the City's sister cities to commemorate an event involving the sister city. The dates for the display shall correspond to the event being commemorated.

I. Commemorative Flags may 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.

**6. ORDER OF DISPLAY OF FLAGS:**

- A. The United States Flag shall be displayed in the first position of honor.
- B. The California State Flag shall be displayed in the second position of honor.
- C. The City Flag shall be displayed in the third position of honor.
- D. The POW/MIA Flag shall be displayed in the fourth position of honor.
- E. Commemorative Flags shall be displayed in the fifth position of honor.

**7. FLYING FLAGS AT HALF-STAFF:**

- A. Federal or State Occasions.

Flags shall be flown at half-staff on the death of Federal or State officials or in the event of, or to commemorate an event of, nationwide significance on instructions from the President of the United States or Governor of California.

- B. Memorial Day.

Flags shall be flown at half-staff until noon on this day, then raised to full staff for the remainder of the day at City Facilities operating on Memorial Day.

- C. Local Prerogative.

Presidential Proclamation 3044 allows for the display of the flag at half-staff “in accordance with recognized customs and practices not inconsistent with law.”

Accordingly, the City Manager may direct the flag at all City Facilities to be flown at half-staff upon the death of a City employee, whether killed in the line of duty or not.

The Mayor may direct the flags at all City Facilities to be flown at half-staff upon the death of a prominent Merced citizen, a current or former Merced City Councilmember, or a current or former Merced resident killed in the line of military duty.

The Police Chief or the Fire Chief may direct the flags at all City police department locations and fire stations to be flown at half-staff upon the death, in the line of duty, of any public safety members in the State of California or upon an extraordinary loss of life of public safety members nationwide.

Flags should be flown at half-staff until the burial of the deceased, but not for more than three days.

D. Placing the Flags at Half-Staff.

To place the flags at half-staff, they shall first be raised briskly to the peak of the staff, then slowly lowered to the midpoint. Before lowering the flags, they are to be raised to the peak again and then lowered all the way.

**8. CARE OF FLAGS:**

Flags are to be dry-cleaned or replaced when they have been soiled. Flags that are torn are not to be flown but are to be burned.

**9. RESPONSIBILITY:**

The Facilities Section staff shall be responsible for bringing the flag displays at City Facilities into compliance with this Policy. On weekends and holidays, the Fire Department duty Battalion Chief shall be responsible for bringing the flag displays at City Facilities into compliance with this Policy.

The City Clerk and/or City Manager's Office shall coordinate the proper display of flags with the Facilities Section staff for special ceremonies.

**APPROVED:**

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**City Manager**