



# City of Stockton

## Legislation Text

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**File #:** 25-0381, **Version:** 1

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### **DISCUSSION OF CITY COUNCIL POLICY MANUAL CHAPTER 2.07, CITY OF STOCKTON FLAG POLICY**

#### RECOMMENDATION

It is recommended that the Legislation and Environmental Committee review and discuss the City of Stockton Flag Display Policy, Chapter 2.07 of the Council Policy Manual, for potential revisions and consider the annual display of certain commemorative flags consistent with that policy.

#### Summary

The City of Stockton Flag Display Policy, Chapter 2.07 of the Council Policy Manual (Attachment A), was adopted in 2019 by the City Council to ensure that the City could exercise control over any commemorative flags raised on City flagpoles. The policy ensures that the raising of such commemorative flags is an act of government speech subject to the full discretion of the City Council.

In June of 2024, the Committee voted to forward a recommendation that the City Council adopt a resolution to have the Pride Flag displayed in commemoration of Pride Month annually during the last week of June. In January 2025, the Committee discussed whether to extend the time limitation for the display of commemorative flags and whether to display the flags of the United States Military Branches. Due to time restrictions, that discussion was continued to the next available meeting.

#### DISCUSSION

##### Background

Prior to the adoption of the Flag Display Policy, the City of Stockton displayed only the United States Flag, the California State Flag, and the City of Stockton Flag on the flagpole located at Stockton City Hall. There are both Federal and State regulations which dictate how the United States Flag and the California Flag must be displayed.

In accordance with City Council direction, on September 30, 2019, the City Attorney's Office presented a draft policy to the Legislation and Environmental Committee for the display of commemorative flags on City flagpoles. Following the presentation, the Committee approved Motion 2019-09-30-0302 forwarding the policy to the City Council for consideration and adoption. Staff incorporated the comments from the Committee and brought the policy to the City Council on November 5, 2019, and the City Council voted unanimously to adopt the policy via Resolution 2019-11-05-1103 (Attachment B).

On May 14, 2024, pursuant to the Flag Display Policy, the City Council approved Resolution 2024-05-14-1203 to raise the Pride Flag in commemoration of Pride Month. Following its discussion, the City

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Council requested that the Flag Policy be brought to the Committee for additional information and possible revision to address the annual raising of the Pride Flag. On June 12, 2024, the Committee approved Motion 2024-06-12-0301 to forward a recommendation that the City Council adopt a resolution to have the Pride Flag displayed in commemoration of Pride Month annually during the last week of June.

### Present Situation

This Committee requested a discussion on whether to extend the time limitations for the display of commemorative flags and whether to display the flags of the United States Military Branches. The following information is presented to assist in the Committee's review and discussion.

### **Constitutional Considerations**

If the City raised commemorative flags without a clear policy that establishes that the raising of these flags is an act of government speech, the City would lose its control and discretion over what flags can be raised on its flagpoles.

When a government regulates private speech on government property it must do so in compliance with the First Amendment. Under First Amendment jurisprudence, a nonpublic forum is a place that is not typically open to the public and public communication. When a government intentionally opens that space to the public for a specific purpose it creates a "limited public forum." In a limited public forum, government regulations need to be reasonable and viewpoint neutral. In other words, the regulations could not discriminate based on the stance or position the speech took.

So, if a city took a nonpublic forum, like a city owned and controlled flagpole, and allowed the public to raise commemorative flags on that flagpole, it would create a limited public forum. Consequently, under these circumstances, that city would not be able to refuse the display of a flag because it disagreed with the message the flag displayed.

However, a government entity has the right to speak for itself. The United States Supreme Court recognizes that a government entity is entitled to say what it wishes and to select the views that it wants to express. Accordingly, if a city wishes to use its own flagpoles to communicate only its own views it can do so. By controlling and adopting the message that it displays, a city can be selective in which commemorative flags are flown on its own flagpoles.

With this in mind, the City of Stockton Flag Display Policy declares that City flagpoles are not intended to serve as a forum for free expression by the public. The policy specifically provides that commemorative flags may be flown only as authorized by the City Council as an expression of the City's official sentiments. Additionally, the policy is structured to require a Councilmember to make the request for the flag display, that the item be agendaized in accordance with current policy, and that the approval be made via a resolution approved by a majority of the City Council. Under this policy, the City retains its discretion to refuse to fly a commemorative flag if it disagrees with the viewpoint of the flag.

Consistent with this policy, no commemorative flag should be displayed on City flagpoles without the express approval of the City Council. What flags and for how the Council chooses to display flags, however, is a matter of discretion consistent with its rights under the Government Speech Doctrine.

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### **Practical Considerations**

Due to the size of the current City Hall flagpole located outside of 425 North El Dorado Street, the City can only fly three flags: the United States Flag, the California State Flag and one other flag. Typically, the third flag is the City of Stockton flag. When a commemorative flag is raised the City of Stockton flag is removed. Additionally, when the United State Flag is flown at half mast, it is the only flag that can be raised on that flagpole.

Accordingly, space permitting, only one commemorative can be flown on a given day.

### **Policy Amendment - Time Limitation**

The Flag Policy provides: “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 seven continuous days.” This seven (7) day restriction stems from the direction provided at the September 30, 2019, Committee meeting. No time restriction is required. Thus, this is a matter of discretion on the part of the City Council.

If the City Council would like to extend the timeframe, it may do so by amending the current policy to remove the time restriction or to change the maximum length. Included as Attachment C for the Committee’s consideration is a resolution and redline exhibit for potential changes to the Flag Display Policy that reflect a display period of up to thirty (30) days.

### **Resolution Authorizing Annual Display - Pride Flag**

No amendment to current policy is needed to approve an annual flag raising. There is nothing in the current policy that would prevent the City Council from approving a resolution that directed City staff to raise a commemorative flag annually, provided the Council followed the procedural requirements for agendaing and approving the resolution.

As noted above, on June 12, 2024, the Committee approved Motion 2024-06-12-0301 to forward a recommendation that the City Council adopt a resolution to have the Pride Flag displayed in commemoration of Pride Month annually during the last week of June (Attachment D). If the Committee supported the same flag raising, no additional resolution regarding this commemorative flag is required. Staff will update the resolution to reflect current dates and prepare the item for consideration by the full City Council.

If the Committee amends the policy and would like to recommend the Pride Flag be displayed for longer than seven (7) days or would like the flag to be displayed during a different week in June, a new resolution can be presented to City Council as reflected in Attachments E and F, respectively. Staff would require direction on when and how long the flag should be displayed.

### **Resolution Authorizing Annual Display - Military Birthdays**

As part of its original 2019 Resolution, the City Council authorized the display of the United States Marine Corps flag on November 10, 2019, to celebrate the establishment of the military branch. This authorized the display of the flag for only that one day in 2019. Future displays of the Marine Corps

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flag or other military flags would require the City Council to approve a resolution in accordance with the Flag Display Policy.

The “birthdays” of the military branches are as follows:

- United States Army: June 14, 1775
- United States Navy: October 13, 1775
- United States Marine Corps: November 10, 1775
- United States Coast Guard: August 4, 1790
- United States Air Force: September 18, 1947
- United States Space Force: December 20, 2019

Attachment G is included here for the Committee’s review and potential recommendation to the full City Council for the annual display of the United States Military Branch flags to commemorate their respective dates of establishment.

### **Next Steps**

Staff seeks clarification on what additional information and/or changes the Committee would like to make, if any, to the policy or to the proposed resolution(s). Specifically, staff seeks direction on the following:

- Would the Committee like to forward a policy amendment as reflected in Attachment C?
- Would the Committee like to forward Attachment D for the annual display of the Pride Flag without changes?
- Would the Committee like to revise the resolution forwarding the recommendation for the annual display of the Pride Flag? If so, when and/or for how long would the Committee like the flag displayed?
- Would the Committee like to forward a recommendation for the annual display of the flags of the military branches as reflected in Attachment G?

Attachment A - CPM Chapter 2.07, Flag Display Policy

Attachment B - Resolution 2019-11-05-1103

Attachment C - Proposed Resolution for Policy Amendment

Attachment C\_Exhibit 1\_Redlines

Attachment D - 2024 Resolution for Annual Display of Pride Flag

Attachment E - 2025 Amended Resolution for Annual Display of Pride Flag - Days

Attachment F - 2025 Amended Resolution for Annual Display of Pride Flag - Time

Attachment G - Proposed Resolution for Annual Display of Military Flags