



City of Manteca Flag Policy

CITY OF MANTECA
ADMINISTRATION CENTER

Current Policy and First Amendment Basics

- **Current Policy**

- City flagpoles are not a forum for the public's free expression
- “*Commemorative Flags*” may be flown outside City Hall if approved by the **City Manager** as an expression of the City's speech
 - [Although third parties often make requests to the City to fly commemorative flags, those are not considered. The City Manager has the final authority]
- Sister City Flags may be flown inside City Hall

- **First Amendment**

- Protects freedom of speech from government restrictions
- **Cities must consider how allowing/denying flag requests interacts with the First Amendment**
 - Example: The *Establishment Clause* prohibits a City from favoring one religion over another
- 3 Forums → (1) Traditional Public Forum; (2) Limited Public Forum; and (3) Private Forum



Government Speech vs. Public Participation

	GOVERNMENT SPEECH	PUBLIC PARTICIPATION (LIMITED PUBLIC FORUM)
What is it?	City may say what it wishes, and entitled to select the views it wants to express subject to the Establishment Clause (e.g. no religious enforcement).	City invites public participation, such as taking requests from third parties and adopts time/place/manner restrictions.
Impact on flag policy?	City is declaring all flags flown on City flagpoles are an expression of the City's views.	Results in a limited public forum, meaning City is limited on how it may regulate what commemorative flags are flown, as defined by the City.
Legal Risks?	Less legal risk.	Greater legal risk.



What are the City's Options?

	Option 1	Option 2	Option 3	Option 4	Option 5
Policy	Only government flags at City Hall and leased properties	(1) Government flags at City Hall; (2) Leased City properties— <i>no</i> flags may fly <u>OR</u> <i>only</i> flags related to organization/lease <u>OR</u> <i>any</i> flag may fly	(1) Calendar of commemorative flags at City Hall; and (2) Leased City properties— <i>no</i> flags may fly <u>OR</u> <i>only</i> flags related to organization/lease <u>OR</u> <i>any</i> flag may fly	Commemorative flags allowed <u>with</u> public request of commemorative flags	Leave as is (commemorative flags, but <u>no</u> requests from third parties)
Government Speech or Public Participation	Government Speech	Mix	Mix	Public Participation (limited public forum)	Government Speech
Who will decide?	CC	CC, CM, or tenant	CC	CC or CM	CM
How restrictive?	Most	Somewhat	Somewhat	Least	Somewhat
Legal risk?	Least	Some	Some	Most	Some
Other considerations	No public participation, no recognition of groups, causes, etc.	Will leased properties involve government speech or public speech?	Middle ground of options; government speech, but allows causes and groups to be recognized	Time consuming and will utilize City resources; opens up forum for debate and legal exposure	Opens forum for legal exposure and debate if City is choosing what groups and causes to recognize



Considerations To Keep In Mind



- **First Amendment Challenges:** If the City unintentionally creates a public forum, it may lose the ability to restrict offensive or divisive flags
- **Community Relations:** Decisions about which commemorative flags to display may generate strong community reactions and potential division
- **Administrative Burden:** Reviewing applications and managing disputes could consume significant staff and legal resources
- **Consistency:** Without a clear written policy, ad hoc decisions could create legal vulnerability and perceptions of unfair treatment.

The City must decide whether its flagpoles will be used exclusively for government speech or made available as a forum for community expression.



What are other cities doing?

- **Stockton**

- Government speech
- Commemorative flags approved by resolution
 - Flag requests from City Council only

- **Tracy**

- Mixed speech
 - Consensus of 2 City Council members to agenda consideration of the display of a commemorative flag, on May 1st of every year
 - Must be approved by supermajority of City Council
 - No requests from third parties

- **Sacramento**

- Mostly government speech
- City facilities only fly U.S. flag, California flag, and City flag
- In the month of June, Pride flag shall be flown from all City facilities
- Other ceremonial flags allowed: sister cities, flags “in conjunction with official actions of the City Council”, and flags of professional sports teams

- **Merced**

- Government speech approach
 - CM authority to fly U.S., state, city, POW/MIA, and sister city flags
 - Commemorative flags approved by CC → (1) CC votes for what flags will be displayed the following calendar year; and (2) At a second meeting, CC adopts resolution establishing flags to be flown for the entire year

