



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 12/16/2025

ITEM NO: 15

DATE: December 16, 2025
TO: Mayor and Town Council
FROM: Chris Constantin, Town Manager
SUBJECT: **Discuss, Consider, and Provide Direction to Modify the Town of Los Gatos Flag Policy for Town-Owned Flagpoles, Including Potential Future Display of the Pride Flag During LGBTQ+ Pride Month in June 2026**

RECOMMENDATION: Discuss and provide direction on a preferred policy approach for modifying the Town's Flag Policy to address commemorative flags.

FISCAL IMPACT:

There is no significant direct fiscal impact associated with policy adoption. There is a cost associated with the purchase and periodic replacement of commemorative flags and any necessary hardware. If Council ultimately directs a more extensive commemorative flag program (e.g., multiple flags at multiple locations throughout the year), staff may return with a more detailed estimate of workload and associated costs.

STRATEGIC PRIORITY:

Not Applicable.

BACKGROUND:

In 2016, the Town Council adopted a Flag Policy to document procedures for raising and lowering flags on Town properties. The policy was amended in 2018 to add detailed standards for the appearance of the official Town flag (**Attachment 1**).

Over the years, residents have approached the Town with requests to display flags that would signal support for particular cultural, civic, or community events. Past examples include a request to fly the flag of Ireland to recognize the Town's Sister City relationship with Listowel

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Reviewed by: Town Manager, Town Attorney, and Finance Director

and to support the Los Gatos Irish Writers Festival. More recently, at the request of Mayor Rob Moore and accepted in accordance with the Town's Agenda Setting Policy, staff were directed to agendize a discussion which included the consideration of displaying the Rainbow Pride flag in June 2026.

The adopted Flag Policy focuses on defining the official Town seal and Town flag, governing their use, and outlining procedures for raising, lowering, gifting, and trading Town flags. It specifies the required design of the seal and states that the Town flag consists of the color seal centered on a white field with the phrase THE GEM OF THE FOOTHILLS printed below. The policy also requires all flags on Town property to follow the United States Flag Code, including the President's authority to order federal flags to half-staff and the Governor's authority to issue state flag proclamations. Direction from the Town Mayor may set local flag status (e.g., lowering of the flags), and the Town Manager carries responsibility for day-to-day implementation and final application of federal and state declarations. The Town Manager may also authorize the gifting or trading of the Town flag.

The policy does not describe any process or criteria for displaying commemorative or symbolic flags. Its scope is limited to the official Town flag and procedures for managing the status of governmental flags. As a result, the current policy does not provide authorization for displaying non-governmental flags such as the Pride flag or any other commemorative flag. Any desire to display such flags would require a policy amendment that defines eligibility standards, approval procedures, timeframes for display, and the decision making authority for these actions. The Town currently displays governmental flags and lowers flags in accordance with Presidential orders, as required by the United States Flag Code.

On June 17, 2025, then Vice Mayor Moore requested a future agenda item to be heard before December 31, 2025, to consider options for modifying the Town's policy to allow the Pride flag to be displayed in June 2026. Mayor Hudes agreed, and the item is scheduled for Council consideration on December 16, 2025.

Staff's role in this report is limited to presenting context, examples from other jurisdictions, and administrable policy structures. Staff do not advocate for or against any particular commemorative flag or any specific policy outcome.

DISCUSSION:

Federal and state law establish baseline requirements for governmental flag display, while leaving local agencies discretion to adopt their own policies for additional flags displayed on municipal property.

United States Flag Code

Title 4 of the United States Code (also referred to as the Flag Code) provides rules of etiquette and protocol for the display and handling of the U.S. flag. Relevant provisions include:

- Title 4, section 6 describes how the U.S. flag is to be displayed, including the requirement that it be illuminated if displayed at night. It also states that the flag should be hoisted briskly and lowered ceremoniously.
- Title 4, section 7 defines the order of precedence when multiple flags are displayed together, requiring the U.S. flag to occupy the position of superior prominence.
- Title 4, section 7(m) authorizes the President to order the U.S. flag to be lowered to half-staff.

The Flag Code does not prohibit local governments from flying additional flags, nor does it require municipalities to display the U.S. flag, but when flown, federal protocol must be followed.

California Law

California Government Code Section 420 establishes that the official California State Flag must conform to state-defined specifications. State law does not limit a Town's authority to authorize additional flags beyond governmental flags, provided that federal flag precedence is observed when governmental flags are flown. When the State flag is flown, it must be displayed in a manner that follows the general principles of flag precedence set out in the U.S. Flag Code. California does not mandate a process for local commemorative flags. Cities, therefore, have discretion to adopt their own policies, provided they maintain compliance with applicable federal protocol when the U.S. flag is displayed.

Government Speech and Policy Design

Under the established First Amendment doctrine, when a municipality chooses messages to convey on its own property, including through the display of flags, it is engaging in government speech. In such circumstances, a city may decide which flags to display without creating a public forum for private expression, so long as it maintains control over the message conveyed. However, the Town may inadvertently transform the flagpoles into a public forum in how it approaches authorizing flags on Town owned flag poles. Consequently, the Town Council should request legal guidance on any direction provided related to what can be displayed.

A brief search of sources to support how a local Town can approach discussing the Flag policy found that it is a good practice to consider

- Maintaining written policies governing municipal flagpoles.
- Affirming the municipality's intent to use flagpoles for government speech.
- Identifying which flags are displayed as a matter of course.

- Establishing criteria for evaluating commemorative flags.
- Avoiding opening flagpoles to general public use or case-by-case access without defined standards.

The Town's current Flag Policy does not address commemorative flags and therefore provides no framework for decision making regarding non-governmental flag requests. Policies that allow case-by-case approvals without defined standards may be more vulnerable to being characterized as creating a public forum, which can limit the Town's ability to decline future requests.

Examples from Peer Jurisdictions

The Town Clerk requested example Flag policies through a listserve with California City Clerks. The request generated nine complete policy examples from cities in Northern and Central California. Taken together, these policies show a broad consensus on how municipal flagpoles are regulated.

Cities uniformly rely on the government speech doctrine, treat flagpoles as non-public forums, and limit displays to flags that the city itself intentionally chooses to express its own views. Common elements across responding jurisdictions include:

- **Flagpoles not open to public expression.** Every respondent states that city flagpoles are reserved for government speech. Millbrae, Albany, Scotts Valley, Dublin, and Sunnyvale all expressly state that their poles are not available for public requests. Chowchilla prohibits all commemorative flags other than limited military or event flags.
- **Council authorization required.** Most jurisdictions require a Council resolution to authorize any commemorative flag. Some, like Scotts Valley and Albany, require that only a Council member may initiate the request.
- **Strict limits on duration and location.** Virtually all responding cities cap display periods at 31 days or fewer and designate one location (typically City Hall) for commemorative flag displays. Chowchilla and Tulare restrict commemorative flags more severely, limiting them to government, military, or sister city flags.
- **Clear ordering and placement rules.** All policies maintain the United States flag at the highest position of honor, followed by the State flag, with commemorative flags placed below. These rules track federal and state flag codes reproduced in the Albany policy.
- **Content restrictions.** Many policies prohibit flags associated with political parties, election outcomes, commercial entities, or religious movements to avoid any

appearance of endorsement. Scotts Valley and Millbrae both include explicit prohibitions of this kind.

In terms of their approaches to Pride and Other Commemorative Flags, the cities included the following:

- **Annual Pride Month displays.** Several cities now include the Pride flag among their formally authorized recurring commemorative displays.
 - Millbrae includes Pride Month in its list of annually recognized commemorations.
 - Arroyo Grande authorizes an annual display of the Pride flag each June along with the Juneteenth flags.
 - Sunnyvale has a long-standing practice of authorizing Pride Month and has expanded that practice to include the Transgender flag for the Transgender Day of Visibility.
- **Case-by-case or restricted approaches.**
 - Dublin permits commemorative flags but requires Council initiation and limits the location to the Civic Center.
 - Albany allows commemorative flags only when initiated by a Council member and approved by formal action.
 - Scotts Valley takes a similar approach but narrows eligibility to commemorations aligned with its strategic goals and values.
 - Chowchilla prohibits commemorative flags entirely, except for military and event use.
 - Tulare allows only governmental, sister city, or ceremonial flags.
 - Union City authorizes additional flags only by Council proclamation and does not preapprove recurring commemorative flags.

Several jurisdictions expressly rely on *Shurtleff v. City of Boston*, 596 U.S. 243 (2022) (holding that, because Boston's flag-raising program did not express government speech, Boston's refusal to let petitioners fly their flag violated the Free Speech Clause of the First Amendment), to support their flagpole policies. In that case, the United States Supreme Court held that when a city exercises control over its flagpoles and determines which flags may be flown, the display constitutes government speech rather than private expression. Because government speech is not subject to the Free Speech Clause in the same way as public forums, the Court explained that a city may choose what messages to express and what messages not to express when using its own flagpoles. Arroyo Grande's resolution cites this principle directly, stating that the Free Speech Clause "does not prevent the government from declining to express a view" and that choosing which flags to fly is a permissible governmental choice about how the city speaks.

Given that this case has implications for how municipalities structure flag display policies, any legal interpretation or application of *Shurtleff* to the Town's circumstances should be referred to the Town Attorney for review and guidance.

Overall, the listserv responses demonstrate that cities typically establish controlled, Council directed commemorative flag programs, either narrowly limited or selectively expanded to include civic values such as Pride Month.

Policy Options for the Town of Los Gatos

The options presented below reflect different ways to align a future policy with the background and legal framework described above, and each option carries different implications for administration, symbolic expression, and legal clarity.

Option 1 – Commemorative Flag Policy with Council Authorization

This option would establish a written Flag Display Policy that designates Town flagpoles as government speech, limits routine display to governmental flags, and allows the Town Council to authorize commemorative flags by resolution on a case-by-case basis. Such a policy would mirror practices widely adopted by peer jurisdictions. The Pride flag could be considered under this structure through a subsequent resolution. Consideration of any specific commemorative flag would occur only in accordance with the criteria and procedures established by the adopted policy.

Option 2 – Option 1 with Direction to Return with a Pride Flag Resolution

This option would adopt the commemorative flag structure in Option 1 and simultaneously direct staff to return with a resolution authorizing display of the Pride or Progress Pride flag during June 2026. This option would establish a commemorative framework and, at the Council's discretion, direct staff to prepare a proposed resolution concerning the display of the Pride or Progress Pride flag in June 2026.

Option 3 – Adopt a "Government Flags Only" Policy (No Commemorative Flags)

Under this option, Town flagpoles would be reserved strictly for governmental flags. No commemorative or symbolic flags, including the Pride flag, would be displayed. Recognition of events or commemorations could continue through existing tools such as proclamations or Town-sponsored programming. This option offers administrative simplicity and ensures the flagpoles are reserved exclusively for official governmental representation.

Option 4 – Option 4 – Provide Direction and Refer a Draft Policy Back to Council Policy Committee with Direction

The Council may elect to provide high-level direction on policy elements and refer the matter back to staff or the Council Policy Committee for further refinement before adopting a final policy. This allows for a customized approach suited to Los Gatos.

Option 5 – No Action or Alternate Direction

Under this option, the Council would leave the current policy unchanged. Because the existing policy does not authorize commemorative flags, no nongovernmental flags could be displayed unless the policy were amended in the future.

In considering any policy change, it is prudent to view the context and analysis through the boundaries of how the policy is defined and can be implemented. Different jurisdictions adopting commemorative flag policies have experienced varying community responses, both supportive and critical. These variations highlight the importance of ensuring that any adopted framework is objective, consistently applied, and transparent. As such, the Council should weigh both the symbolic value of a commemorative-flag program and the importance of maintaining fairness, clarity, and community cohesion. A policy that limits non-governmental flags to those approved by the Town Council, for specified commemorative occasions, for limited durations, and under consistent placement rules, can preserve governmental control, reduce the risk of litigation, and provide a clear, transparent process.

At the same time, the Council should be aware that the display of commemorative flags, including the Pride flag, may be interpreted by some members of the community as the Town expressing a particular viewpoint. Such perceptions may arise regardless of the Town's intent and have, in other jurisdictions, generated debate or requests for policy revision. Establishing objective, clearly defined criteria helps ensure that any future flag-display decisions remain consistent, transparent, and grounded in the adopted policy framework.

Given those considerations, the policy options above offer a spectrum from maintaining a strict "governmental-flag only" posture to a more inclusive commemorative-flag model. The Council's preferred direction should reflect the Town's values, administrative capacity, and desire for transparency and equity. If the Council desires caution, referral to the Council's Policy Committee for further drafting may be the most prudent next step. If the Council is prepared to embrace symbolic recognition, adopting a Commemorative Flag Policy with Council-authorized displays is a well-supported and commonly accepted approach.

COORDINATION:

This staff report was coordinated with the Town Attorney and the Town Clerk.

ENVIRONMENTAL ASSESSMENT:

Consideration and potential adoption of a flag display policy constitutes an administrative action that does not involve construction or physical changes to the environment. Under California Environmental Quality Act (CEQA) Guidelines section 15378(b), adoption of internal governmental policies is not a project. Alternatively, the action is exempt under CEQA

Guidelines section 15061(b)(3), as it can be seen with certainty that no environmental impact will result.

CONCLUSION:

The display of flags on Town-owned flagpoles carries symbolic significance and must conform to federal and state legal requirements. The United States Flag Code and California law establish procedural obligations when governmental flags are displayed and provide local governments with substantial discretion regarding any additional commemorative flags. Courts and professional guidance emphasize that municipalities should adopt clear written policies that designate flagpoles as expressions of government speech and define which flags may be displayed.

The Town Council has several viable policy paths, ranging from permitting commemorative flags through a defined Council approval process to limiting municipal flagpoles exclusively to governmental flags. Each of these policy paths is permissible and commonly used by municipalities, and none presumes or precludes future consideration of any specific commemorative flag. Direction from the Council will determine whether staff should prepare a commemorative flag framework, a government-flags-only policy, or a blended approach, and whether staff should return with a specific resolution authorizing display of the Pride or Progress Pride flag during Pride Month in June 2026.

Attachments:

1. Town of Los Gatos Flag Policy