



CITY OF ORLAND STAFF REPORT

MEETING DATE: October 21, 2025

TO:

Honorable Mayor and Councilmembers

FROM:

Scott Drexel, City Attorney

SUBJECT:

Consider Policy Options and Potential Adoption of Resolution Establishing a Flag and Banner Display Policy for City Property and City-Maintained Rights-of-Way (Discussion/Action)

SUMMARY:

Per Council direction from the October 7, 2025, meeting, this Agenda Item presents two policy options for the display of flags on City property and City-maintained rights-of-way. These policies would establish clear guidelines, ensure constitutional compliance, and provide a framework for addressing flag display requests.

BACKGROUND:

At the October 7, 2025, City Council meeting, the Council directed staff to develop formal flag display policies for consideration. This direction arose from the recognition that the City currently lacks a formal policy governing flag displays on City property and City-maintained rights-of-way, and that recent community interest in flag displays, including a request to display flags for cultural holidays, has highlighted the need for clear guidelines.

Currently, the Orland Flag Society operates independently, storing flags on City property and displaying American flags along Walker Street on national holidays and other occasions without formal City oversight. The flags are displayed using holes drilled in the sidewalks approximately 25 years ago with Caltrans permission. This informal arrangement, while serving the community well for many years, lacks the legal clarity needed to address requests for alternative flag displays and could potentially be interpreted as creating a public forum.

The Supreme Court's 2022 decision in *Shurtleff v. City of Boston* provides important guidance for municipalities regarding flag displays. The Court held that cities must clearly establish whether flag displays on government property constitute "government speech" or a "public forum." If treated as government speech, the City may exercise editorial discretion

over which flags are displayed. If treated as a public forum, the City must remain viewpoint-neutral and cannot discriminate based on the message or viewpoint expressed.

Following the *Shurtleff* decision, many California cities have adopted formal flag policies to clarify that their flagpoles represent government speech rather than public forums. These policies help cities maintain control over their messaging while avoiding potential constitutional challenges. The absence of a formal policy leaves the City vulnerable to legal challenges and creates uncertainty about how to address flag display requests.

Additionally, the flag display locations along Walker Street appear to be within Caltrans' right-of-way rather than City property, which raises jurisdictional questions that should be clarified as part of establishing a comprehensive flag policy.

ANALYSIS:

Staff has prepared two policy options for Council consideration:

Option 1: Government Speech Only Policy

This policy limits flag displays on City property and City-maintained rights-of-way to official government flags and City event banners only:

- United States Flag
- California State Flag
- City of Orland Flag (if adopted)
- Prisoners of War/Missing in Action (POW/MIA) Flag
- Banners for City-sponsored events and programs

This approach:

- Clearly establishes City flagpoles as government speech
- Avoids any appearance of favoritism toward particular groups
- Minimizes legal risk and administrative burden
- Ensures all residents are equally represented under government flags
- Is the approach recently adopted by several California cities
- Includes provisions for City event banners to promote municipal programs and activities

Option 2: Government Speech with Limited Commemorative Flags

This policy allows official government flags and City event banners plus limited commemorative flags approved by City Council:

- All flags and banners allowed under Option 1
- Commemorative flags approved by Council resolution for specific time periods
- Strict criteria excluding religious, commercial, political, or electoral messages
- Maximum display period of 7-30 days
- Requests must come from Councilmembers, not the public

This approach:

- Maintains government speech designation while allowing limited flexibility
- Permits recognition of significant historical events or causes
- Requires Council approval for each commemorative flag
- Still protects against constitutional challenges
- Requires more administrative oversight

RECOMMENDATION:

Staff recommends that the City Council:

1. Review the two policy options, receive public comment, select the preferred policy option, and **adopt Resolution No. 2025-___** with the selected policy attached as Exhibit A; OR
2. Review the two policy options, receive public comment, provide direction on the preferred policy option with any requested modifications, and **direct staff to return** with a final resolution and policy for adoption at the next regular meeting; OR
3. Provide alternative direction to staff.

ATTACHMENTS:

1. Proposed Resolution
 2. Flag Display Policy Option 1 - Neutral
 3. Flag Display Policy Option 2 - Government Speech with Commemorative Flags
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