



CITY COUNCIL MEETING STAFF REPORT

Meeting Date: September 8, 2022		Subject: City of Wilsonville Flag Policy	
		Staff Member: Amanda Guile-Hinman, City Attorney	
		Department: Legal	
Action Required		Advisory Board/Commission Recommendation	
<input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd Reading Date: <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda		<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input checked="" type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable Comments: Sought input from the Diversity, Equity and Inclusion Committee and will seek its recommendation once the Council provides feedback on a draft City of Wilsonville Flag Policy.	
Staff Recommendation: N/A			
Recommended Language for Motion: N/A			
Project / Issue Relates To:			
<input type="checkbox"/> Council Goals/Priorities:	<input checked="" type="checkbox"/> Adopted Master Plan(s): DEI Committee Strategic Plan	<input type="checkbox"/> Not Applicable	

ISSUE BEFORE COUNCIL:

Review draft of City Flag Policy and provide any feedback to staff.

EXECUTIVE SUMMARY:

The City of Wilsonville Flag Policy will codify a framework for the City to display commemorative flags on City flag poles and in City facilities, among other regulations. This Staff Report explains the background leading to developing a flag policy and explains some of the policy choices currently reflected in this draft Flag Policy.

A. Background

The impetus to create a City of Wilsonville Flag Policy arises from five (5) key considerations.

First, the Diversity, Equity and Inclusion (DEI) Committee developed a Diversity, Equity and Inclusion Committee Strategic Plan (the “Plan”) that the Council adopted via Resolution No. 2979 on July 18, 2022. Objective 3 in the Plan is “Inclusive Cultural Events, Celebrations and Holiday Recognitions.” One of the Strategic Actions listed under Objective 3 is “Visual representation (flags, symbols, holiday decor on City property).” The inclusion of flags as part of the visual representation warrants the City developing a flag policy as a framework for how, when, and what flags can be displayed on City flag poles and in City facilities. As discussed below, staff presented to the DEI Committee at its August 2022 meeting a prior draft of the Flag Policy for its feedback. The draft Flag Policy attached to this Staff Report (Attachment 1) includes the revisions discussed with the DEI Committee.

Second, in January 2022, the United States Supreme Court issued its decision in the matter, *Shurtleff v. City of Boston*, 142 S. Ct. 1583 (2022). That case involved a lawsuit brought against the City of Boston by a private organization when the city refused to display the organization’s self-described “Christian flag” on one of the city’s flag poles in its City Hall Plaza when the city allowed other groups and individuals to hoist a flag of their choosing on the particular flag pole. The crux of the case centered on the difference between government speech and private expression protected by the First Amendment. Government speech is when a government entity chooses what it says or does not say.

As the Court noted, the line between government speech and private expression is blurred when the government invites people to participate in a program. The Court focused particular attention on the extent to which the city had actively shaped or controlled the message. The Court found that the city did not shape or control the messages of previously allowed flags and did not have any written policies or internal guidance about what flags groups could fly on the City flag pole. The Court held that Boston’s denial was a violation of the private organization’s constitutional rights.

Third, Wilsonville Code (WC) 6.150(2) allows persons who obtain a special event permit to display banners consistent with the regulations stated in WC 6.150(2). That section includes reference to a plan set out by the Public Works Department, which is currently a written internal banner policy that has not been updated since 2011.

Fourth, as mentioned, the City has an internal banner policy for banners that may be placed on certain streetlights. This internal policy should be updated and incorporated into any overarching commemorative flag policy to provide one document for the City and the public to reference.

Fifth, in December 2021, the League of Oregon Cities published its *Guide to the Public Display of Flags on Government Buildings*. See Attachment 2. Staff relied on this Guide to develop the draft City Flag Policy.

B. Policy Choices in Current Draft Flag Policy

To aid the Council's discussion of the draft Flag Policy, this Staff Report provides an overview of each section of the Flag Policy, with particular emphasis on Sections 5 and 6 of the Flag Policy (items 3 and 4 below). To the extent that the DEI Committee discussed a particular section in its August 2022 meeting, a summary of the discussion is included.

1. Section 1 of Flag Policy – Purpose

Section 1 of the draft Flag Policy includes a purpose statement. Initially, Section 1 was entitled "Background" and only included the first sentence. The DEI Committee discussed a more in-depth purpose statement in Section 1 that goes beyond the legal aspects of the Flag Policy to identify the City's intention in promoting visual representation, as expressed in the Plan.

2. Sections 2-4 of Flag Policy – Federal, State, and City Flags

Section 2 of the Flag Policy is essentially a recitation of the federal regulations governing the U.S. Flag. The draft Flag Policy does not and cannot deviate from those federal regulations. Similarly Section 3 of the Flag Policy follows the Oregon statutes governing the State of Oregon Flag and the POW/MIA Flags. Section 4 covers a City of Wilsonville Flag should the City ever adopt an official City flag. The regulations for such a flag are consistent with the federal and state regulations for the respective US Flag and Oregon Flag.

3. Section 5 of Flag Policy – Commemorative Flags

Section 5 is a crucial policy discussion point, as it is directed toward the City's visual representation through flags and is in response to the *Shurtleff* decision. While subsections 5.2 and 5.3 follow the same general format as the prior sections for the federal and state flags, Section 5 begins with a description of the types of flags that are considered commemorative flags and the "General Requirements" subsection 5.1 is different. Initially, the Flag Policy was drafted to provide the City Council or the City Manager with the authority to authorize the display of a commemorative flag. The DEI Committee, after extensive discussion, opted to have the decision rest only with the City Council and then add the City Manager to the list of people who may request the display of a commemorative flag.

The last sentence of subsection 5.1 expressly states that members of the public cannot directly request the Council allow them to display flags so as to create a clear delineation between government speech and private expression in light of the *Shurtleff* decision.

4. Section 6 of Flag Policy – Banners

Section 6 governs banners. The section is generally reflective of the City’s internal banner policy, with modifications, as provided by the Public Works Department, since it is the department tasked with having a banner plan under WC 6.150. A key distinction in Section 6 is that WC 6.150(2) does allow the use of certain streetlights for permitted Large Special Events and so there is the possibility of some private expression to occur on certain streetlights. However, no one, outside of the City itself, may have a banner placed on a streetlight without the required permit.

Staff also notes that Villebois has its own banner program as part of the Master Sign and Wayfinding Plans approved as a component of each Sub Area Plan (SAP). Outside of ensuring compliance with the Master Sign and Wayfinding Plans, the City does not operate, manage, or maintain banners within Villebois. Thus, this distinction is expressly called out in subsection 6.1.1.3 of the draft Flag Policy.

Subsection 6.3 also includes the current costs that must be paid to the City for installing and removing banners for special events, since WC 6.150(2)(b) requires that City staff install and remove the banners.

5. Section 7 of Flag Policy – Amendments

Since the DEI Committee recommended that only the City Council approve commemorative flags, Section 7 states that amendments to the Flag Policy, outside of changes in federal or state law regarding the U.S. or Oregon Flag, must be approved by Council.

C. Other Items Discussed by the DEI Committee

During discussion of the draft Flag Policy, members of the DEI Committee expressed interest in exploring the creation of a City of Wilsonville flag and specific designs of the official flag for various events and particular months in the year. The DEI Committee decided to put this discussion in its “parking lot” of ideas that could be further explored as it set its strategic priorities from the Plan.

A member of the DEI Committee also raised a question about the Rotary Club of Wilsonville’s “Peace Poles” that are installed on City properties. While outside the scope of the Flag Policy, staff will recommend that the resolution adopting the Flag Policy include language that codifies the City’s desire to have these poles on City property as well, with placement subject to approval by the City Manager.

EXPECTED RESULTS:

An adopted Flag Policy will codify a framework for the City to display commemorative flags on City flag poles and in City facilities.

TIMELINE:

Staff plans to attend the September 2022 DEI Committee meeting to seek a recommendation from the Committee to the Council to adopt the City Flag Policy. Staff will then return to Council for adoption.

CURRENT YEAR BUDGET IMPACTS:

N/A

COMMUNITY INVOLVEMENT PROCESS:

Staff sought feedback from the DEI Committee at its August 2022 meeting on the draft Flag Policy and staff will seek a recommendation from the DEI Committee at its September 2022 meeting for Council to adopt the Flag Policy.

POTENTIAL IMPACTS OR BENEFIT TO THE COMMUNITY:

As identified in the DEI Strategic Plan, flags can serve as visual representation of the City's mission and values. As identified in the 2021-23 City Council Goals, the Council identified the opportunity to continue supporting a focus on diversity, equity, and inclusion and to create an environment where people feel safe to engage.

ALTERNATIVES:

The City may decide to forgo a Flag Policy and choose not to display commemorative flags on City flag poles or in City facilities.

CITY MANAGER COMMENT:

N/A

ATTACHMENTS:

1. Draft City of Wilsonville Flag Policy
2. *Guide to the Public Display of Flags on Government Buildings*, League of Oregon Cities (Dec. 2021).