



City of Oceanside

300 North Coast Highway,
Oceanside, California 92054

Staff Report

File #: 25-822

Agenda Date: 5/21/2025

Agenda #: 20.

DATE: May 21, 2025

TO: Honorable Mayor and City Councilmembers

FROM: City Attorney's Office

TITLE: RESOLUTION APPROVING THE DISPLAY OF THE RAINBOW PRIDE FLAG AT CITY HALL EACH YEAR DURING THE MONTH OF JUNE AS A FORM OF GOVERNMENT EXPRESSION

RECOMMENDATION

Staff recommends that the City Council adopt a resolution authorizing the display of the Rainbow Flag or Pride Flag below the City of Oceanside flag on the existing flag pole at City Hall for the entire month of June as government speech in honor of Pride month, beginning in June 2025 and each June thereafter.

BACKGROUND AND ANALYSIS

Oceanside Civic Center Complex is the site of Oceanside City Hall and various public buildings dedicated to providing City services. Adjacent to the building which houses the Parks and Recreation Department and the Cashier's Office is a dedicated installation of three flag poles. Consistent with state and federal law and in accordance with long-standing practice, the City has only flown the official U.S. Flag, California Flag, and City Flag, along with the POW/MIA Flag. The City does not traditionally open its flag-poles for private speech.

In December of 2023, the City Council debated adopting an official flag policy with respect to displaying flags on the existing flag poles. No policy was adopted at that time.

Historically, the Rainbow Flag (aka Pride Flag) has been used since the 1970s as a symbol of LGBTQ+ pride and social movements. More recently, the month of June has been celebrated as Pride Month by proclamation of numerous state and local agencies, including in the City of Oceanside.

On the May 7, 2025 City Council Agenda, Mayor Sanchez and Deputy Mayor Joyce placed a Councilmember item pursuant to City Council Policy 100-02 to provide direction to staff with respect to adding a flag pole at City Hall and flying the Pride Flag during the month of June. Following public comment and deliberation, a majority of the City Council directed staff to return to the City Council with a Resolution which directs City staff to raise the Rainbow/Pride Flag for the month of June each year to honor Pride month. As clarified during the deliberation, the intent of the City Council and the direction to proceed by formal Resolution was to preserve the City's flag poles for government

speech, only, carrying messages adopted by a majority of the City Council as government expression on behalf of the City, and not to open a forum for private speech or for requests from individuals or groups, or as a sponsor of such private speech. Through this deliberation, it was also determined that the Rainbow/Pride flag would fly on the same pole as the City flag, avoiding the need to install a fourth pole.

Based on City Council direction, staff worked quickly to bring back the directed Resolution and recommends adoption.

FISCAL IMPACT

There will be a minor cost associated with procuring a Rainbow Pride Flag and outfitting the City flag pole to carry an additional flag.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

Similar to a private citizen, the City has a right to free speech including the right to take a position or communicate its policies. (See *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 135 S.Ct. 2239 (2015) ["When government speaks, it is not barred from determining the content of what it says; it is generally entitled to promote a program, espouse a policy, or take a position."; "Forum analysis, which applies to government restrictions on purely private speech occurring on government property, is not appropriate when the state is speaking on its own behalf."] "The flying of a flag other than a government's own can also convey a governmental message." (See *Shurtleff v. City of Boston*, 142 S.Ct. 1591 (2022).)

Following the *Shurtleff* decision, best practices include maintaining a formal flag policy. However, such a policy is not legally required to maintain the City's flag poles for government speech only. A formal resolution of the City Council setting forth the history and intent of using the City's flag poles only for government expression adopted by a majority of the City Council has been successfully used by multiple jurisdictions that have also elected to fly the Rainbow Pride Flag without adopting a formal flag policy.

The City may at a future date change its position or adopt a more formal flag policy if so directed by the City Council.

Prepared by: T. Steven Burke, Jr., City Attorney
Submitted by: Jonathan Borrego, City Manager

ATTACHMENTS:

1. Staff Report
2. Resolution