



Meeting Date: April 22, 2026

**TOWN OF MORAGA**

**STAFF REPORT**

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**To: Honorable Mayor and Councilmembers**  
**From: Scott Mitnick, Town Manager**  
**Subject: Town Public Facilities Flag Display Policy**

**RECOMMENDATION**

Consider Town Facilities Flag Display Policy options and provide direction to staff with respect to preferred policy option.

**BACKGROUND**

At the Town Council meeting of February 11, 2026, staff was directed to research and provide Town Council with flag display policy options.

The Town does not have a consolidated administrative policy governing the display of flags at Town-owned facilities. Adoption of a formal flag display policy would establish standards for the display of United States, State of California, Town of Moraga, and ceremonial flags at designated Town-owned public facilities. Such a policy would also clarify if Town flagpoles are to be used to convey official government speech, and if they are intended to serve as a forum for public free expression. A comprehensive flag display policy should further address outdoor and indoor display standards, half-staff observances, ceremonial flag displays, care and retirement of flags, and assignment of responsibility for implementation.

**DISCUSSION**

***U.S. Constitution Free Speech Clause & Local Government Authority***

The Free Speech Clause of the U.S. Constitution does not prevent a local government from declining to express a viewpoint (government speech) on areas of public property that are not traditionally used for free speech activity (public fora). Governments are generally free to express to select the views that it wants to express, subject to certain constitutional and legal constraints (See *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 833; *Rust v. Sullivan*, 500 U.S. 173, 194). However, the boundary between government speech and private expression can blur when a local government invites the people to participate or speak

in a particular location. (See *Shurtleff v. City of Boston* 596 U.S. 243 (2022) In order to ensure that government speech is preserved when it comes to the display of flags on public property, local governments typically adopt policies to ensure that the message that is being conveyed, even if by a third party, is the government's message, rather than private speech. (*Shurtleff v. City of Boston*, supra at p. 255).

### ***Bay Area Local Government Flag Display Policies and Practices***

Staff reviewed flag display policies used in other Bay Area municipalities and learned that they range from the traditional restriction of allowing the display of only government flags to open flexibility to allow for the display of a wide range of messages and symbols.

The most common approach is to restrict the display of only the United State, State of California, and local municipal flags. Some municipalities allow limited display of governmental ceremonial flags, subject to strict local government review and approval. A few local governments allow for more open display of flags. In addition, at least one Contra Costa County municipality allows for the display of political and ceremonial flags or banners at a designated public location such as at a park or recreational area.

For the purpose of this staff report, the following highlights two policy options which are in line with the Town's current practice and allow for Town Council consideration and opportunity to provide different direction to staff:

#### ***1. Traditional Flag Display Policy Option***

This option would continue the past practice of restricting the display to content-neutral traditional government flags and would include the following components:

- Limit the display to the United States, State of California, and Town of Moraga flags only
- Not authorize the display of political or ceremonial flags of any type

This policy reflects the historic practice of local governments throughout the United States to ensure that flag poles are used for the intent that has been in place dating back to the founding the nation 250 years ago (which is to identify public buildings). Local government building flag poles throughout California have long remained content-neutral, and are used to display only United States, California, and municipal flags. This approach is the simplest to administer, avoids case-by-case judgment calls, minimizes legal exposure, and best aligns with the goal of treating flagpoles as a vehicle for official governmental expression rather than as a political platform for causes, special interest groups, or commemorative observances.

#### ***2. Governmental Ceremonial Flag Display Policy Option***

Some local governments authorize ceremonial flags via a narrowly tailored Flag Display Policy which may include the following components:

- Expressly state that Town flagpoles are not a forum for public expression and are limited to ceremonial flags approved by the Town Council, which would be considered government speech

- Restrict the display to a single designated flagpole or location
- Require requests to be from the Mayor, a Councilmember, or Town Manager, rather than from third parties
- Set clear Town Council approval criteria included in the authorizing resolution and/or policy

This option does come with the risk that other special interest groups or individuals would request equal display time for their flags. If this happens, it is possible that the Town would not be able to deny their request.

### ***Staff Policy Recommendation***

From a professional, content-neutral perspective, staff recommends the Traditional Flag Display Policy Option because it would provide clear standards, reduce administrative discretion, and minimize the risk of future disputes and legal exposure over requests to display non-governmental, political, and/or commemorative flags.

### ***Flag Display Requirements***

No matter which Flag Display Policy option is pursued, the following Flag Display Requirements should be included in such a policy:

- Specify maximum display periods and require administrative review for logistics, consistency, and compliance with federal and state flag protocols
- Reserve the primary flag positions for the United States, State of California, and Town of Moraga flags, with any ceremonial flag displayed only in a subordinate position or on a designated pole, except as otherwise required by law or official half-staff proclamations
- Include standard provisions regarding indoor and outdoor display, order of precedence, flag care, retirement of damaged flags, and departmental responsibility for implementation

### **FISCAL IMPACT**

Any fiscal impact is expected to be minor and limited to staff time. A policy authorizing ceremonial flags may create modest additional administrative costs for processing requests, coordinating installations, and ensuring consistent implementation. Funding for the purchase and care of ceremonial flags will need to be determined.

### **CEQA COMPLIANCE**

Adoption of an official Town of Moraga Flag Display Policy is not subject to review under the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21000, et seq., and the CEQA Guidelines (14 Cal. Code Regs. §§ 15000 et seq.) because it is not a “project” that may cause a direct or reasonably foreseeable indirect physical change in the environment. It is also exempt from CEQA as an organizational or administrative activity

that will not result in direct or indirect physical changes to the environment.

### **ALTERNATIVES**

1. Direct staff to return to Town Council with a proposed Traditional Flag Display Policy Resolution;
2. Direct staff to return to Town Council with a proposed Governmental Ceremonial Flag Display Policy Resolution;
3. Direct staff to return with other policy options;
4. Direct staff to return with a revised version of any of the above;
5. Take no action.

### **NEXT STEPS**

Once Town Council determines which Flag Display Policy to pursue, staff will return with a final resolution and administrative policy for consideration at the May 13, 2026 Town Council Meeting.

### **ATTACHMENTS**

[Addendum - Public Comment Received](#)