

**REGULAR**

**NUMBER: 260.1**

**TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING THE DISPLAY OF FLAGS ORDINANCE**

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of January 3, 2012, upon motion by Councilmember Gomez and was adopted (second reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

**RECITALS AND FINDINGS:**

**WHEREAS**, revisions and updates to the City’s ordinance for the display of flags on certain facilities are needed; and

**WHEREAS**, there is a basis and need for provisions allowing display of the flags of Sister Cities, and those of the country of which they are a part, in light of the special relationship and bond between the City of Milpitas and its Sister Cities created by the mutual exchange of cultural, technical and demographic information, allowing enhanced understanding, acceptance and respect for each other as ratified by official recognition of the Sister City relationship by the governing bodies of the respective governmental entities. It is found that as a positive fulfillment of that mutual acceptance and respect existing in the Sister City relationship, it is appropriate to display the flags of Sister Cities with equal dignity and respect with that of the United States of America and the City of Milpitas during the visit of Sister City delegations to the City of Milpitas; and

**WHEREAS**, the City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project which has the potential for causing a significant effect on the environment.

**NOW, THEREFORE**, the City Council of the City of Milpitas does ordain as follows:

**SECTION 1. RECORD AND BASIS FOR ACTION**

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

**SECTION 2. AMENDMENT OF CHAPTER 600 OF TITLE I OF THE MILPITAS MUNICIPAL CODE**

Chapter 600 of Title I of the Milpitas Municipal Code is hereby amended to read as follows:

Chapter 600 – DISPLAY OF FLAGS

**Section 1 – Definitions**

I-600-1.10 - City Hall Display Flag Poles

“City Hall Display Flag Poles” shall mean those three (3) flag poles situated at the northeast corner of the intersection of Calaveras Boulevard and Milpitas Boulevard in front of City Hall. “City Hall Display Flag Poles” shall also refer to those four (4) flag poles located to the rear of City Hall and adjacent to the pond, those three (3) flag poles located between the Senior Center and the Community Center buildings, and the three (3) flag poles located at the front entrance to the Senior Center.

I-600-1.20 - Ceremonial Flag Poles

“Ceremonial Flag Poles” shall mean those two (2) City-owned flag poles situated at the City-owned Higuera Adobe which the City has designated to be used by members of the community to conduct flag raising ceremonies.

**Section 2 – City Hall Display Flag Poles**

I-600-2.10 - City Hall Display Flag Poles

City Hall Display Flag Poles shall at all times be used exclusively by the City of Milpitas as follows:

(1) Those three (3) flag poles located at the front of City Hall shall at all times be used exclusively by the City for the purpose of the display of the flags of the United States of America, the State of California, and the City of Milpitas in accordance with all applicable federal and state regulations.

(2) Those four (4) flag poles located at the rear of City Hall adjacent to the pond shall be used to display the flags of the United States of America, the State of California, the National POW/MIA flag and the City of Milpitas in accordance with all applicable federal and state regulations at all times except the flags of Sister Cities may be displayed at this location at limited times as set forth in section 2.30 below.

(3) Those three (3) flag poles located between the Senior Center and the Community Center buildings shall at all times be used exclusively by the City for the purpose of the display of the flags of the United States of America, the State of California, and the City of Milpitas in accordance with all applicable federal and state regulations.

(4) Those three (3) flag poles located at the front entrance to the Senior Center shall at all times be used exclusively by the City for the purpose of the display of the flags of the United States of America, the State of California and the City of Milpitas in accordance with all applicable federal and state regulations.

#### I-600-2.20 - Display of Other Flags at City Hall

Except as allowed in Section 2.30, the ceremonial display of flags other than the flags of the United States of America, State of California, National POW/MIA and City of Milpitas, on City Hall Display Flag Poles or within the Civic Center Complex and City of Milpitas Community Center is not permitted.

#### I-600-2.30 - Exception - Sister City Flags and City Council Approved Ground Level Ceremonies

(1) The flag of the country and that of a city officially recognized by the City Council as a Sister City may be displayed in lieu of the MIA/POW flag and the flag of the State of California on two of the four flag poles located at the rear of City Hall adjacent to the pond during the time of the Sister City delegation's visit to the City of Milpitas.

(2) The City Council may, after a public hearing, direct City staff to permit the ground level display of a flag of another nation in existence after 1954, only at the following specified locations at the Civic Center complex or the City of Milpitas Community Center:

- (1) City Hall Rotunda
- (2) Area adjacent to pond at City Hall
- (3) City of Milpitas Community Center
- (4) City Council Chambers

Said flag display shall not be permitted on City Hall Display Flag Poles and shall only be permitted on a flagstaff, flagstand or similar device which does not cause the flag height to exceed ten (10) feet.

#### I-600-2.40 - City Approval

All ground level ceremonies must be approved by the City Council. Any party intending to conduct a ground level ceremony at one of the designated locations shall submit an application to the Office of the City Manager, on a form approved by the City Council, at least thirty (30) days prior to the requested ceremony date. A public hearing will be held regarding each ground level ceremony application prior to its approval or denial by the City Council.

### **Section 3 – Ceremonial Flag Poles**

#### I-600-3.10 - Location

The City's Ceremonial Flag Poles consist of two flag poles owned by the City of Milpitas and located at the Higuera Adobe in the City of Milpitas.

#### I-600-3.20 - Use

The City's Ceremonial Flag Poles shall remain unused at all times other than during City-approved flag raising ceremonies. The Ceremonial Flag Poles shall be used only to conduct flag raising ceremonies in accordance with the provisions of this Chapter.

#### I-600-3.30 - Flag Raising Ceremony

Flag raising ceremonies shall be conducted in accordance with all applicable provisions of federal and state laws, including provisions of the United States Code and California Government Code relating to the proper display of flags. During an approved flag raising ceremony, one pole shall at all times be used to raise and display the flag of the United States of America. The other flag pole shall be used to raise and display the flag of another nation in existence since 1954. The flag of the United States of America displayed during a flag raising ceremony shall be equal to or larger in size and dimension than the other flag.

#### I-600-3.40 - City Approval

All flag raising ceremonies must be approved by the City Council. Any party intending to conduct a flag raising ceremony at the City's designated Ceremonial Flag Poles shall submit an application to the Office of the City Manager, on a form approved by the City Council, at least thirty (30) days prior to the requested ceremony date. A public hearing will be held regarding each flag raising ceremony application prior to its approval or denial by the City Council.

#### I-600-3.50 - Limitation on Use

No individual or organization shall have more than one (1) flag raising ceremony per calendar year.

### **Section 4 – Severability**

#### I-600-4.10 - Severability

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

### **SECTION 3. EFFECTIVE DATE AND POSTING**

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.