PLEASE NOTE:

This copy of Ordinance No. 260.2 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING PORTIONS OF CHAPTER 600 OF TITLE 1 OF THE MUNICIPAL CODE RELATING TO THE DISPLAY OF FLAGS ON CITY-OWNED PROPERTY

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _______________, upon motion by ___________________________ 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            Rich Tran, Mayor

APPROVED AS TO FORM:

_______________________________
Christopher J. Diaz, City Attorney
RECITALS AND FINDINGS:

WHEREAS, the City Council of the City of Milpitas has directed revising the existing City of Milpitas flag display regulations found in the City’s Municipal Code, including to change the existing limited public forums at Higuera Adobe Park and at ground level ceremony locations into non-public forums.

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 MILPITAS MUNICIPAL CODE, TITLE I, CHAPTER 600

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 at Cesar Chavez Plaza, and the three (3) flag poles located at the front entrance to the Senior Center. The City Hall Display Flag Poles are not intended to serve as a forum for free expression by the public, but rather for the display of the Flags of the United States, State of California and City of Milpitas, the National POW-MIA flag, Sister or Friendship City Flags, and any Commemorative Flags as may be authorized by the City Council as an expression of the City’s official sentiments.

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. The Ceremonial Flag Poles are not intended to serve as a forum for free expression by the public, but rather for the display of the Flags of the United States, State of California and City of Milpitas, and any Commemorative Flags as may be authorized by the City Council as an expression of the City’s official sentiments.

I-600-1.30 – Commemorative Flags

"Commemorative Flag" shall mean any flag which identifies with a specific date, historical event, cause, nation or group of people, whereby the City honors or commemorates the date, event, cause, nation or people by flying the flag. Commemorative Flags shall be displayed at City facilities identified herein only upon City Council direction, consistent with the City’s vision, mission, and guiding principles, incorporating themes of diversity, equity, social justice, and inclusion.

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 or Friendship Cities or Commemorative Flags 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 at the Cesar Chavez Plaza shall at all times be used exclusively by the City for the purpose of the to 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, except the flags of Sister or Friendship Cities or Commemorative Flags may be displayed at this location as set forth in section 2.30 below.

(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/Friendship City Flags and City Council Approved

Commemorative Flags

Ground Level Ceremonies

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

(2) The flag of the country and that of a city officially recognized by the City Council as a Sister City or Friendship City may be displayed in lieu of the flag of the State of California and of the City of Milpitas on two of the three flag poles located at Cesar Chavez Plaza during the time of the Sister City or Friendship City delegation's visit to the City of Milpitas.

(3) The City Council may, after a public hearing, by resolution, direct City staff to permit the ground level display of a Commemorative Flag as an expression of the City’s official sentiments by any of the following means: (i) display of another nation in existence after 1954 in lieu of the MIA/POW flag on one of the four City Hall Display Flag Poles located at the rear of City Hall adjacent to the pond, (ii) display in lieu of the flag of the State of California on one of the three flag poles located at Cesar Chavez Plaza, or (iii) display through ground level ceremonies only at any of 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/Cesar Chavez Plaza
Commemorative Said flag display shall not be permitted on City Hall Display. Flags displayed at ground level ceremonies. 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. Commemorative Flags shall be displayed for a period of time that is reasonable or customary for the subject that is to be commemorated, but no longer than 30 continuous days.

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 (2) 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 Council-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 (1) 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. Commemorative Flag. 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 Commemorative flag.

I-600-3.40 - City Approval
All flag raising ceremonies must be approved by the City Council. The City Council may, by resolution, direct City staff to display the flag of the United States of America and any Commemorative Flag on the City’s Ceremonial Flag Poles as an expression of the City’s official sentiments, for those dates and times and on those terms and conditions as set forth in the resolution. 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. Commemorative Flags shall be displayed for a period of time that is reasonable or customary for the subject that is to be commemorated, but no longer than 30 continuous days.

I-600-3.50 - Limitation on Use
No individual or organization shall have more than one (1) flag raising ceremony per calendar year. [Reserved]
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.