

Offered by Councilors Bok, Louijeune, Flynn, Arroyo, Breadon, Coletta, Fernandes Anderson, Lara, Flaherty and Worrell



CITY OF BOSTON IN CITY COUNCIL

ORDINANCE AMENDING CITY OF BOSTON CODE, ORDINANCES, SECTION 1, TO CODIFY CITY POLICY REGARDING THE DISPLAY OF FLAGS ON CITY HALL PLAZA

- WHEREAS*, The City of Boston traditionally displays three flags on City Hall Plaza: of the United States, the Commonwealth of Massachusetts, and the City of Boston; *and*
- WHEREAS*, Historically, the City of Boston has also on occasion flown various other flags in place of the flag of the City of Boston; *and*
- WHEREAS*, The question of what parameters could be legally applied to the selection of such other flags became a subject of dispute in 2017 when the City declined to fly the Christian flag of Camp Constitution, prompting the court case *Shurtleff v. Boston*, which was appealed all the way to the Supreme Court of the United States; *and*
- WHEREAS*, Since the matter came under consideration by the Supreme Court, flying of other flags on City Hall Plaza in place of the City of Boston flag has been suspended; *and*
- WHEREAS*, In June 2022, the Supreme Court released an opinion in *Shurtleff v. Boston* stating that the City of Boston's prior policy for determining which flags could fly on the third flagpole did not meet the standard of government speech, as it did not clearly limit such flag-raising to expressing official messages of the City, and therefore this prior policy had to be regarded as creating a public forum for private speech to which all voices were entitled to access; *and*
- WHEREAS*, Writing for the Court, however, Justice Stephen Breyer laid out a test by which the raising of other flags on the City's flagpole could be properly limited to government speech, and stated explicitly that "nothing prevents Boston from changing its policies going forward"; *and*
- WHEREAS*, It is important that the City of Boston, as a city of immigrants, be able to express its official solidarity with people who have come to Boston from other nations, and to express other official, City-endorsed messages from the Mayor and City Council that may be appropriately accompanied by ceremonial flag-raising; *and*
- WHEREAS*, For these expressions of official City sentiment to be clearly construed by the residents of Boston, it is also important to clearly demarcate and codify that the City's flagpoles are not intended to serve as a forum for free expression by the public; *and*
- WHEREAS*, The clearest way to establish a new City of Boston policy in regard to the display of flags on City Hall Plaza is to enshrine our standards for such displays in city ordinance; *NOW, THEREFORE*

Be it ordained by the City Council of Boston as follows:

SECTION 1: City of Boston Code, Ordinances, Section 1, is hereby amended by inserting after Section 1-3, the following new subsection:

1-3A DISPLAY OF FLAGS ON CITY HALL PLAZA

The purpose of this Ordinance is to establish guidelines for the display by the City of Boston of (1) flags of governments recognized by the Federal Government, and (2) other flags on City Hall Plaza. Nothing herein shall be construed to conflict with City of Boston Code, Ordinances Sections 1-2.4 to 1-2.7, inclusive or Section 1-3.

1-3A.1 Policy.

It is the policy of the City of Boston that flags should be displayed in conformance with Federal and State policies, as stated in the Federal “Our Flag” publication of the Congress, House Document No. 96-144; Chapter 2, Section 6 of the Massachusetts General Laws and Chapter 2, Section 6A of the Massachusetts General Laws.

1-3A.2 Order of Precedence.

Outdoor flags will be flown at City facilities in the following order of precedence: first, the United States flag; second, the Commonwealth of Massachusetts flag; and third, the City of Boston flag.

1-3A.3 Special occasions of Federal, State and local proclamation.

- a. Flags on City Hall Plaza shall be displayed in accordance with the above standards. However, the Mayor may order flags to be lowered to half staff including, but not limited to flags of the United States of America and the Commonwealth of Massachusetts in honor of the death of a City employee killed in the line of duty, or in observance of a specific event or circumstance.
- b. Pursuant to proclamation of the Mayor, or resolution of the City Council, other flags may be flown by the City in place of the City of Boston flag

1-3A.4 Other Flags.

The City’s flagpoles are not intended to serve as a forum for free expression by the public. The following flags may be displayed by the City as an expression of the City’s official sentiments:

- a. *Flags of Governments Recognized by the United States.* Flags of governments recognized by the United States may be displayed upon the proclamation of the Mayor or by resolution of the City Council.
- b. *Flags Displayed in Conjunction With Official Events or Ceremonies as Announced by Mayoral Proclamation or City Council Resolution.* By proclamation of the Mayor or resolution of the City Council, other flags may be displayed as official City events or ceremonies.
- c. *Flags of Professional Sports Teams.* The Mayor may order the display of the flag of a professional sports team in commemoration of a significant achievement involving the City of Boston.
- d. *Ownership of Other Flags.* The City shall acquire ownership of all flags that it flies in place of the City of Boston flag.

SECTION 2: This Ordinance shall take effect upon passage.