

MEMORANDUM

DATE: DECEMBER 6, 2009

TO: DAVE RULLER, CITY MANAGER
BILL LILICH, PUBLIC SAFETY DIRECTOR
JIM PEACH, POLICE CHIEF,
JIM WILLIAMS, FIRE CHIEF

FROM: GENE ROBERTS, PUBLIC SERVICE DIRECTOR

SUBJECT: CITY OFFICE BUILDING FLAG POLICY

Gentlemen,

At the request of the City Manager I have completed a draft City of Kent American Flag Policy specific to the lowering of the flag to half staff.

During review of the several publications on this issue there appears to be two primary opinions regarding a municipality lowering the American Flag to half staff for any reason other than when ordered by the President of the United States or the Governor of a State. Both opinions refer to the requirements of United States Code; Title 4, Chapter 1 - The Flag, §7. Position and manner of display, Part "m." The respective interpretations fall into two camps:

1 - That only by Federal Law, Presidential Order or Order of a State Governor shall the flag be lowered to half staff.

2 - That the Federal Law provides the language which states "or in accordance with recognized customs or practices not inconsistent with law" to provide for municipalities to lower the flag to half staff following local "customs or practices" by way of policy.

As an example, the Federal Law does not provide for the lowering of the American Flag on Memorial Day, however, by "tradition is to fly the flag of the United States at half-staff from dawn until noon local time".

From my discussions with other staff members it appears both camps are represented within the City and as such there will be some that are happy

with the policy and some that are not. I have draft a policy that I would like to discuss/review at the next TE&S meeting.

I equally believe that it would be wise for Mr. Silver to review and provide opinion regarding this issue specific to the "flag Code" that is referred to by all with an opinion regarding this issue.

Attached to this email is an eighteen page copy and paste from the internet. Starting on page 5 is the United States Code; Title 4, Chapter 1 - The Flag. The §7. Position and manner of display, Part "m" is the specific reference to the flag at half staff. If Jim Silver is of the opinion that the Federal Law does not prevent the City from developing a "City Policy" and we can agree on a draft policy I believe that we should take the draft to KCC for their review and approval.

Thanks.

City of Kent
American Flag
Policy

The City of Kent shall display the American Flag at half staff in a manner consistent with the requirements of United States Code; Title 4, Chapter 1 – The Flag, §7. Position and manner of display, Part “m”. As such when the United State Code, the President of The United States, the Governor of Ohio or as recognized customs or practices not inconsistent with the United State Code as outlined by this policy, the United States Flag shall be flown at half staff on all municipal buildings and grounds under the jurisdiction of the City of Kent on occasions specified by this policy or as ordered by the Mayor of the City of Kent.

The following days as identified by the President of the United States or as provided for in Federal Law shall cause the American Flag to be lowered to half staff:

May 15 - Peace Officers Memorial Day, unless it is the third Saturday in May,
Armed Forces Day, full-staff all day

The week in which May 15 occurs - Police Week

Last Monday in May - Memorial Day (until noon)

September 11 - Patriot Day

First Sunday in October - Start of Fire Prevention Week

December 7 - National Pearl Harbor Remembrance Day

For 30 days - Death of a president or former president

For 10 days - Death of a vice president, Supreme Court chief justice/retired chief justice, or speaker of the House of Representatives.

From death until the day of interment - Supreme Court associate justice, member of the Cabinet, former vice president, president pro-tempore of the Senate, or the majority and minority leaders of the Senate and House of Representatives. Also for federal facilities within a state or territory, for the governor.

On the day after the death - Senators, members of Congress, territorial delegates or the resident commissioner of the commonwealth of Puerto Rico

The Mayor of the City of Kent, by virtue of Kent City Charter Section 38, is recognized as the head of the City government for all ceremonial purposes and as such may order the lowering of the American Flag to half staff.

In addition to the Mayor of Kent ordering the lowering of the American Flag to half staff the following specific recognized customs or practices shall also be cause for the lowering of the American Flag:

1. A current resident of the City of Kent while on active military duty in any branch of the United States military and is killed in the line of duty.
2. Any graduate of Kent City School while on active military duty in any branch of the military and is killed in the line of duty.
3. The death of any current employee of the City of Kent who's death was caused by the employee's execution of their assigned duties for the City.
4. A City of Kent employee whose death occurs as a proximate result of the employees assigned duties with the City and is not actively on duty at the time of his/her death.

To properly fly the flag at half-staff, it must first be hoisted briskly to the top of the pole, and then slowly lowered to half staff of the height of the pole. Similarly, when the flag is to be lowered from half-staff, it should be first hoisted briskly to the top of the pole, and then lowered slowly to the base of the flagpole.

United States Code Title 4 Chapter 1 — The Flag

§7. Position and manner of display

The flag, when carried in a procession with another flag or flags, should be either on the marching right; that is, the flag's own right, or, if there is a line of other flags, in front of the center of that line.

m. “The flag, when flown at half-staff, should be first hoisted to the peak for an instant and then lowered to the half-staff position. The flag should be again raised to the peak before it is lowered for the day. On Memorial Day the flag should be displayed at half-staff until noon only, then raised to the top of the staff. By order of the President, the flag shall be flown at half-staff upon the death of principal figures of the United States Government and the Governor of a State, territory, or possession, as a mark of respect to their memory. In the event of the death of other officials or foreign dignitaries, the flag is to be displayed at half-staff according to Presidential instructions or orders, **or in accordance with recognized customs or practices not inconsistent with law**. In the event of the death of a present or former official of the government of any State, territory, or possession of the United States, or the death of a member of the Armed Forces from any State, territory, or possession who dies while serving on active duty, the Governor of that State, territory, or possession may proclaim that the National flag shall be flown at half-staff, and the same authority is provided to the Mayor of the District of Columbia with respect to present or former officials of the District of Columbia and members of the Armed Forces from the District of Columbia. The flag shall be flown at half-staff 30 days from the death of the President or a former President; 10 days from the day of death of the Vice

President, the Chief Justice or a retired Chief Justice of the United States, or the Speaker of the House of Representatives; from the day of death until interment of an Associate Justice of the Supreme Court, a Secretary of an executive or military department, a former Vice President, or the Governor of a State, territory, or possession; and on the day of death and the following day for a Member of Congress. The flag shall be flown at half-staff on Peace Officers Memorial Day, unless that day is also Armed Forces Day. As used in this subsection —

1. the term "half-staff" means the position of the flag when it is one-half the distance between the top and bottom of the staff;
2. the term "executive or military department" means any agency listed under sections 101 and 102 of title 5, United States Code; and
3. the term "Member of Congress" means a Senator, a Representative, a Delegate, or the Resident Commissioner from Puerto Rico.”

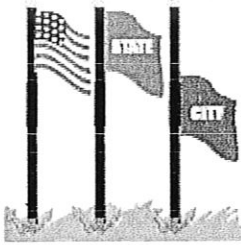
This policy shall be subject to change in the event any change occurs in the laws of the United States or State of Ohio regulating the lowering to half staff of the American Flag.

City Policy – US Flag - References

Index to references

City lowering the American Flag to half staff – not permitted	page 01
City lowering the American Flag to half staff – permitted	page 02
GOOD-FAITH MISUNDERSTANDINGS	Page 03
US Flag Code specific to half staff Part “m”	page 08
May 15 - Peace Officers Memorial Day, unless it is the third Saturday in May, Armed Forces Day, full-staff all day	Page 08
The week in which May 15 occurs - Police Week	Page 10
Last Monday in May - Memorial Day (until noon)	Page 11
July 27 - Korean War Veterans Day	Page 12
September 11 - Patriot Day	Page 14
First Sunday in October - Start of Fire Prevention Week.	Page 15 & 17
December 7 - National Pearl Harbor Remembrance Day	Page 18
For 30 days - Death of a president or former president	Page 08
For 10 days - Death of a vice president, Supreme Court chief justice/retired chief justice, or speaker of the House of Representatives.	Page 08
From death until the day of interment - Supreme Court associate justice, member of the Cabinet, former vice president, president pro-tempore of the Senate, or the majority and minority leaders of the Senate and House of Representatives. Also for federal facilities within a state or territory, for the governor.	Page 08
On the day after the death - Senators, members of Congress, territorial delegates or the resident commissioner of the commonwealth of Puerto Rico	Page 08

Can the mayor order the US flag to half-mast?



No. According to the Flag Code, only the President of the United States, your state's Governor, and the Mayor of the District of Columbia can order the US flag lowered to half-staff.

If everyone were to half-staff the US flag at will, the symbolic value of that honor would be lost. Another option is to display black crepe near the entrance to your building, perhaps with a photograph of the former mayor, firefighter, police officer, etc.

We recommend that you fly your town flag at half staff.

<http://www.ushistory.org/betsy/faq.htm#q80>

Display at half-staff

The flag is displayed at half-staff (half-mast in naval usage) as a sign of respect or mourning. Nationwide, this action is proclaimed by the president; state-wide or territory-wide, the proclamation is made by the governor. **In addition, there is no prohibition against municipal governments, private businesses or citizens flying the flag at half-staff as a local sign of respect and mourning. However, many flag enthusiasts feel this type of practice has somewhat diminished the meaning of the original intent of lowering the flag to honor those who held high positions in federal or state offices.** President Dwight D. Eisenhower issued the first proclamation on March 1, 1954, standardizing the dates and time periods for flying the flag at half-staff from all federal buildings, grounds, and naval vessels; other congressional resolutions and presidential proclamations ensued. **However, they are only guidelines to all other entities: typically followed at state and local government facilities, and encouraged of private businesses and citizens.**

To properly fly the flag at half-staff, you must first hoist it briskly to the top of the pole, then slowly lower it to three-quarters of the height of the pole. Similarly, when the flag is

to be lowered from half-staff, it should be first hoisted briskly to the top of the pole, then lowered slowly to the base of the flagpole.

Federal guidelines state the flag should be flown at half-staff at the following dates/times:

- May 15 - Peace Officers Memorial Day, unless it is the third Saturday in May, Armed Forces Day, full-staff all day
- The week in which May 15 occurs - Police Week^[30]
- Last Monday in May - Memorial Day (until noon)
- July 27 - Korean War Veterans Day (expired 2003 – reinstated 2009)^{[31][32]}
- September 11 - Patriot Day^[33]
- First Sunday in October - Start of Fire Prevention Week.^{[34][35]}
- December 7 - National Pearl Harbor Remembrance Day^[36]
- For 30 days - Death of a president or former president
- For 10 days - Death of a vice president, Supreme Court chief justice/retired chief justice, or speaker of the House of Representatives.
- From death until the day of interment - Supreme Court associate justice, member of the Cabinet, former vice president, president *pro-tempore* of the Senate, or the majority and minority leaders of the Senate and House of Representatives. Also for federal facilities within a state or territory, for the governor.
- On the day after the death - Senators, members of Congress, territorial delegates or the resident commissioner of the commonwealth of Puerto Rico

Further, the flag is always flown at half-staff at four locations in the United States. These locations are Post Cemetery at Mackinac Island in Michigan, Punchbowl in Honolulu, the Gettysburg National Cemetery, and Arlington National Cemetery

http://en.wikipedia.org/wiki/Flag_of_the_United_States

Flag Etiquette

Half Staff Displays

From the Nov.-Dec. 1994 National Flag Foundations "Standard Bearer" Magazine. This article remains the copyrighted material of the National Flag Foundation and is presented here by permission.

Flying the flag at half-staff is an area of flag etiquette that most people want to make sure they get right. It is also an area for which the road to error is routinely paved with good intentions. With that in mind, we offer this refresher course as the all-important intersection where knowledge meets benevolence.

FLYING THE FLAG AT HALF-STAFF: The pertinent section of the Flag Code says, "by order of the President, the flag shall be flown at half-staff upon the death of principal figures of the United States Government and the Governor of a State, territory, or possession, as a mark of respect to their memory. In the event of the death of other officials or foreign dignitaries, the flag is to be displayed at half-staff according to Presidential orders, or in accordance with recognized customs or practices not inconsistent with law.

In the event of the death a present or former official of the government of any State, territory, or possession of the United States, the Governor of that state, territory, or possession may proclaim that the National flag shall be flown at half-staff." The code also includes other related details including the specific length of time during which the flag should be displayed at half-staff, in the event of the death of a "principal figure"(e.g., 30 days for the death of a sitting or former President, 10 days for the death of a sitting Vice-President,etc.).

GOOD-FAITH MISUNDERSTANDINGS: Although the code is actually pretty clear, confusion continues to occur. For example, U.S. Attorney General Janet Reno recently ordered the American Flag flown at half-staff on all U.S. Department of Justice buildings, in honor of several DEA agents who had died. While NFF understands this gesture, the Flag Code does not give Attorney General Reno the authority to issue that order. Closer to NFF's Pittsburgh, Pennsylvania home, Mayor Tom Murphy ordered all flags flown at half-staff to honor the victims of a plane crash. Here again, a well-intentioned gesture, but one for which no authority exists. NFF points out these "good-faith misunderstandings" not to criticize or embarrass anyone, but rather to head off a growing trivialization of this memorial salute, and to preserve the dignity and significance of flying the U.S. flag at half-staff. To any readers who may think that NFF is insensitive for raising these breaches of etiquette, please be assured that our motives are pure. We grieve these human losses deeply; however, we believe proper respect for our flag must be maintained - no matter the circumstances.

We owe that respect to our living, our dead and our flag.

To position the flag at half-staff, first raise the flag to the peak of the staff for an instant and then lower it to the half-staff position -- roughly halfway between the top and bottom of the staff. Before lowering it for the day, raise the flag again to the peak of the pole for a moment.

By order of the President, the flag shall be flown at half-staff upon the death of principal figures of the United States Government and the Governor of a State, territory, or possession,

as a mark of respect to their memory. In the event of the death of other officials or foreign dignitaries, the flag is to be displayed at half-staff according to U.S. Presidential instructions, or in accordance with recognized customs.

In the event of the death of a present or former official of the government of any State, territory, or possession of the U.S., the Governor of that State, territory, or possession may proclaim that the National Flag shall be flown at half-staff.

The flag shall be flown at half-staff for thirty days following the death of the President or a former President; ten days following the day of death of the Vice President, the Chief Justice or a retired Chief Justice of the United States, or the Speaker of the House of Representatives; from the day of death until interment of an Associate Justice of the Supreme Court, a Secretary of an executive or military department, a former Vice President or the Governor of a State, territory, or possession; and on the day of death and the following day for a Member of Congress. The flag shall be flown at half-staff on Peace Officers Memorial Day, unless that day is also Armed Forces Day.

In a case where the flag is fixed to the pole (often in residential situations) it cannot be flown at half staff. In this instance, it is proper to attach two black ribbons to the end of the pole (not the flag) to show respect. (See mourning on the menu to the left.)

<http://www.americanflags.org/docs/etiquette.jsp?pageId=0690200091781119362388477>

The laws relating to the flag of the United States of America are found in detail in the United States Code. Title 4, Chapter 1 pertains to the flag; Title 18, Chapter 33, Section 700 regards criminal penalties for flag desecration; Title 36, Chapter 3 pertains to patriotic customs and observances. These laws were supplemented by Executive Orders and Presidential Proclamations.

United States Code Title 4 Chapter 1 — The Flag

§1. Flag; stripes and stars on

The flag of the United States shall be thirteen horizontal stripes, alternate red and white; and the union of the flag shall be forty-eight stars *[Note that sec. 2 which follows provides for additional stars. Today the flag has fifty stars representing the fifty states — Webmaster]*, white in a blue field

§2. Same; additional stars

On the admission of a new State into the Union one star shall be added to the union of the flag; and such addition shall take effect on the fourth day of July then next succeeding such admission

§3. Use of flag for advertising purposes; mutilation of flag

Any person who, within the District of Columbia, in any manner, for exhibition or display, shall place or cause to be placed any word, figure, mark, picture, design, drawing, or any advertisement of any nature upon any flag, standard, colors, or ensign of the United States of America; or shall expose or cause to be exposed to public view any such flag, standard, colors, or ensign upon which shall have been printed, painted, or otherwise placed, or to which shall be attached, appended, affixed, or annexed any word, figure, mark, picture, design, or drawing, or any advertisement of any nature; or who, within the District of Columbia, shall manufacture, sell, expose for sale, or to public view, or give away or have in possession for sale, or to be given away or for use for any purpose, any article or substance being an article of merchandise, or a receptacle for merchandise or article or thing for carrying or transporting merchandise, upon which shall have been printed, painted, attached, or otherwise placed a representation of any such flag, standard, colors, or ensign, to advertise, call attention to, decorate,

City Policy – US Flag - References

mark, or distinguish the article or substance on which so placed shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding \$100 or by imprisonment for not more than thirty days, or both, in the discretion of the court. The words "flag, standard, colors, or ensign", as used herein, shall include any flag, standard, colors, ensign, or any picture or representation of either, or of any part or parts of either, made of any substance or represented on any substance, of any size evidently purporting to be either of said flag, standard, colors, or ensign of the United States of America or a picture or a representation of either, upon which shall be shown the colors, the stars and the stripes, in any number of either thereof, or of any part or parts of either, by which the average person seeing the same without deliberation may believe the same to represent the flag, colors, standard, or ensign of the United States of America.

§4. Pledge of allegiance to the flag; manner of delivery

The Pledge of Allegiance to the Flag: "I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.", should be rendered by standing at attention facing the flag with the right hand over the heart. When not in uniform men should remove any non-religious headdress with their right hand and hold it at the left shoulder, the hand being over the heart. Persons in uniform should remain silent, face the flag, and render the military salute. [See Congressional Notes re use of "under God."]

§5. Display and use of flag by civilians; codification of rules and customs; definition

The following codification of existing rules and customs pertaining to the display and use of the flag of the United States of America be, and it is hereby, established for the use of such civilians or civilian groups or organizations as may not be required to conform with regulations promulgated by one or more executive departments of the Government of the United States. The flag of the United States for the purpose of this chapter shall be defined according to title 4, United States Code, Chapter 1, Section 1 and Section 2 and Executive Order 10834 issued pursuant thereto.

§6. Time and occasions for display

- a. It is the universal custom to display the flag only from sunrise to sunset on buildings and on stationary flagstaves in the open. However, when a patriotic effect is desired, the flag may be displayed twenty-four hours a day if properly illuminated during the hours of darkness.
- b. The flag should be hoisted briskly and lowered ceremoniously.
- c. The flag should not be displayed on days when the weather is inclement, except when an all-weather flag is displayed.
- d. The flag should be displayed on all days, especially on
 - o New Year's Day, January 1
 - o Inauguration Day, January 20
 - o Martin Luther King Jr.'s birthday, third Monday in January
 - o Lincoln's Birthday, February 12
 - o Washington's Birthday, third Monday in February
 - o Easter Sunday (variable)
 - o Mother's Day, second Sunday in May
 - o Armed Forces Day, third Saturday in May
 - o Memorial Day (half-staff until noon), the last Monday in May
 - o Flag Day, June 14
 - o Father's Day, third Sunday in June
 - o Independence Day, July 4
 - o Labor Day, first Monday in September
 - o Constitution Day, September 17
 - o Columbus Day, second Monday in October
 - o Navy Day, October 27
 - o Veterans Day, November 11
 - o Thanksgiving Day, fourth Thursday in November
 - o Christmas Day, December 25
 - o and such other days as may be proclaimed by the President of the United States
 - o the birthdays of States (date of admission)
 - o and on State holidays.
- e. The flag should be displayed daily on or near the main administration building of every public institution.