

Honorable Mayor and Members
of the Torrance City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: Fire – Approve maintaining of the current system for displaying the flag of the United States of America on Fire apparatus. Expenditure: None.

RECOMMENDATION

Recommendation of the Fire Chief that the City Council approve maintaining the current system for displaying the flag of the United States of America on Fire apparatus on selected days.

BACKGROUND

At the City Council meeting of June 5, 2012, staff was directed to provide your Honorable Body with options for daily display of the United States flag on fire apparatus.

The Fire Department currently has a system that allows the display of the United States flag on fire apparatus on the following days: Presidents' Day, Armed Forces Day, Memorial Day, Flag Day, Independence Day, Labor Day, Veterans Day, California Admission Day, Patriot Day, and Pearl Harbor Day as well as other days approved by the Fire Chief. The Fire apparatus also has 8"x11" decals displaying "We will never forget September 11, 2001" on both sides, which include the American Flag. (Attachment C)

ANALYSIS

With the current system for displaying the United States flag on Torrance Fire apparatus, the flags are mounted on top deck behind the cab of the front-line fire engines and trucks. (Attachment A)

The United States "Flag Code"

The United States "Flag Code" is found in Title 4 and Title 36 of the United States Code. According to 4 U.S.C, Chapter 1, § 6 (b):

The flag should not be draped over the hood, top, sides, or back of a vehicle or of a railroad train or a boat. When the flag is displayed on a motorcar, the staff shall be fixed firmly to the chassis or clamped to the right fender.

Following this section of the Flag Code will entail mounting the flag on the front right bumper of the apparatus. The Flag Code does not prohibit flying the flag twenty-four hours a day. 4 U.S.C, § 6 (a) states:

It is the universal custom to display the flag only from sunrise to sunset on buildings and on stationary flagstaffs in the open. However,

when a patriotic effect is desired, the flag may be displayed 24 hours a day if properly illuminated during the hours of darkness.

While flags flown outside must be lit at night, this does not seem to be the case for flags displayed indoors; therefore, if apparatus bays are treated as indoors, the flags do not have to be removed every day at dark. The Flag Code also permits flying the flag during inclement weather for "all weather flag". 4 U.S.C, § 6 (c):

The flag should not be displayed on days when the weather is inclement, except when an all weather flag is displayed.

Practices of Displaying the United States Flag

While researching practices of other Fire Departments in Southern California, staff received responses to the survey from Culver City, Downey, El Segundo, Fullerton, Glendale, La Habra Heights, Manhattan Beach, and Oxnard. Of these agencies, only El Segundo stated that it had a written policy, which was to fly the flag on special days only. However, there was a recent precedent that received significant coverage in the press. The City of Seminole, Florida, practice of not displaying the flag properly led to citizens' complaints and protests. The City subsequently decided to follow the United States Flag Code and mount the flag on the front right bumper of the apparatus. (Attachment E)

Additionally, upon inquiring with Sergeant Major Jeff Loper, US Army, Fort Irwin, staff found that in the United States Army when the U.S. Flag is flown from a vehicle, it is mounted on the front right bumper of the vehicle.

Alternatives Considered

The flags used for the daily display system on the Seminole Fire apparatus are 12"x18" nylon flags mounted on a 39" stainless steel pole. These nylon flags are designed for boats and vehicles and suitable for the speeds they are traveling. They are securely fastened to the pole, but can be easily removed if needed for cleaning and replacement. (Attachment B). The cost of implementing the Seminole Fire Department model would be \$900 per year for replacement of the flags every three months and \$2,388 start up costs for the stainless steel poles and mounting hardware on 9 front-line and 5 reserve apparatus.

However, unlike the Seminole Fire apparatus, the current Torrance Fire Department engines and trucks do not have front bumpers that are deep enough to accommodate flags being placed on the front right bumpers. The flag comes in contact with the side of the apparatus and in some cases obscures emergency lighting.

Staff also looked at the option of permanently placing vehicle wrap/decal flag design on two sides of the 9 front line fire apparatus and 6 reserve fire apparatus (5 engines and 1 ladder truck). This option has an estimated implementation cost of approximately \$9,500 and an unknown annual cost as there are no guarantees on how long it will be before the graphics of the "wrapped" flags fade and need to be replaced. Other unknowns are: what will the application do to the paint on the apparatus and how much contrast fading will happen; and what happens if a particular vendor goes out of business and we cannot exactly match the decal/design. Potential issues may also arise in case of damage to the apparatus and/or to the decal flag. The vehicle will have to be taken out of service to have the decal replaced.

An alternative option to the wrap/decal flag would be a decal similar to the one currently displayed on the Police vehicles but larger - approximately 9"x11". (Attachment C)

The practice of displaying the flag decal on Police vehicles originated in 2001 after the 9/11 attack with a donation from a veterans group. At that time, the flag decal was placed on various City vehicles in Fleet, Transit, and Police departments. Since the donation expired, Police has been the only department continuing to display the decal on its marked vehicles.

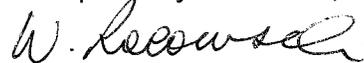
Staff also considered a letter from State Senator Ted Lieu who believes that the current system of displaying the flag is acceptable. (Attachment D) However, it is also the opinion of the City Attorney that to fly the flag daily, the Flag Code should be followed. The City should have a good, legitimate reason to not follow the Flag Code (the inability to mount the flag on the narrow front bumpers of Torrance Fire Apparatus), in which case a deviation from the Flag Code would be suitable by flying the flag only on special occasions.

It must be emphasized that the decision to maintain the current flag display policy is strictly based on policy and protocol implications rather than constitutional considerations. Any flag display policy adoption will have City wide implications since the City owns a diverse fleet of vehicles and equipment at each Department.

Considering the limitation of the narrow bumpers of TFD apparatus, the issues with the wrap/decals, the fact that the Flag Code is not mandatory, and the City Attorney's opinion, the Fire Chief recommends that we maintain the current system of displaying the flag on selected days.

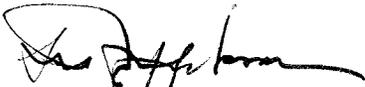
If your Honorable Body decided to direct the Fire Department to fly the flag throughout the year using the existing system of display, then the City Council should approve waiving the Flag Code and direct the City Manager's Office to develop a City wide policy addressing funding and maintenance of flag on other City owned vehicles if departments decide to display the flag.

Respectfully submitted,



WILLIAM RACOWSCHI
Fire Chief

CONCUR:



LeRoy J. Jackson
City Manager

- Attachments: A. Current Flag display on Torrance Fire Department apparatus.
B. Flag display on Seminole Fire Department apparatus.
C. Current decals on all Fire apparatus and Police vehicles
D. Letter from Senator Ted Lieu
E. Articles on Seminole Fire Department

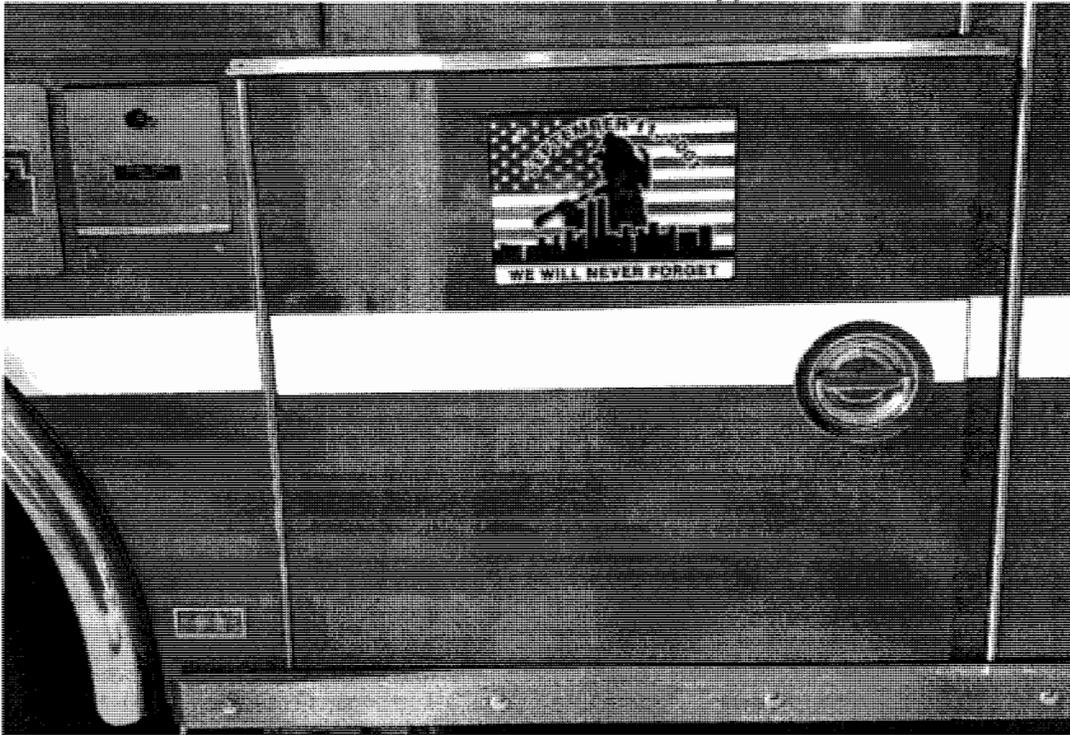
Current Flag Display on Torrance Fire Department Apparatus



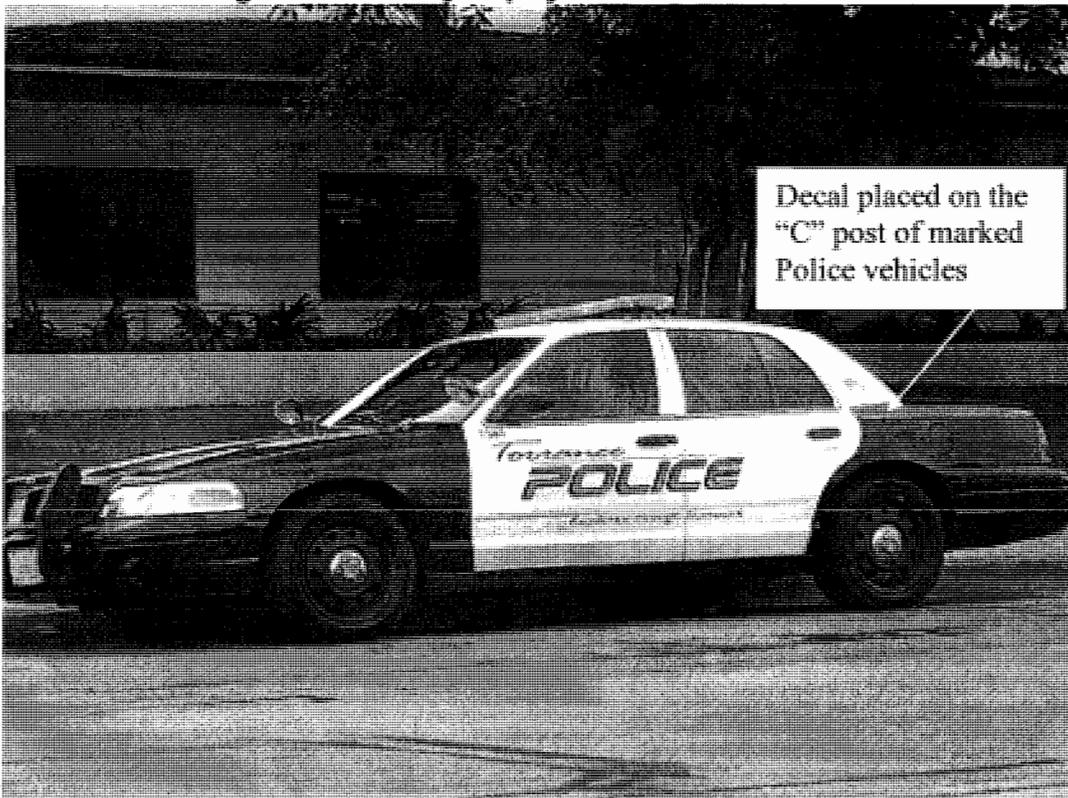
Flag Display on Seminole Fire Department Apparatus



Current 8"x11" Decals on All Fire Apparatus



U.S. Flag decal currently displayed on Police marked vehicles



STATE CAPITOL, ROOM 4090
SACRAMENTO, CA 95814
TEL (916) 651-4028
FAX (916) 323-9056

DISTRICT OFFICE
2512 ARTESIA BLVD SUITE 320
REDONDO BEACH, CA 90278
TEL (310) 315-8994
FAX (310) 315-8733

WWW.SEN.CA.GOV/LIEU
SENATOR LIEU@SENATE.CA.GOV

California State Senate

SENATOR
TED W. LIEU

TWENTY-EIGHTH SENATE DISTRICT



MEMBER
LABOR AND INDUSTRIAL
RELATIONS
MEMBER
APPROPRIATIONS
ELECTIONS AND
CONSTITUTIONAL AMENDMENTS
INSURANCE
VETERANS AFFAIRS

October 17, 2012

Ryan Rasnick
President, Torrance Firefighters Association Local 1138
Torrance Firefighters Association
P. O. Box 3411
Torrance, CA 90510

Dear Mr. Ryan Rasnick:

Thank you again for sharing the union's negotiation with the Torrance Fire Dept concerning the placement of the US flag on fire apparatus. You have asked for my interpretation and opinion regarding the legality of the flag's placement in light of the federal flag code and California law. We have discussed the topic of placing the US flag – as placed in the attached photo you sent – with our attorneys at Legislative Counsel.

It is my opinion that the proposed placement of the US flag by the union is legal and constitutional under both federal and state law. The federal flag code – 4 USC § 1, et seq – in my opinion is an expression of custom and usage for everyone outside of the Executive Branch of the federal government and is not the same as other federal laws that contain sanctions and penalties for failing to comply.

Specifically, one section of the federal flag code – 4 USC § 5 – highlights our finding: “The following codification of existing rules and customs pertaining to the display and use of the flag of the United States of America is 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.” Additionally, the prevailing court case on this subject also held that the federal flag code is not intended to proscribe behavior but is fashioned as expression of prevalent custom and usage regarding display of the American flag. (*Lapolla v Dullaghan*, 1970, 311 N.Y.S.2d 435, 438).

Furthermore, California law does not restrict the placement of the US flag on any fire apparatus, as long as the flag does not obstruct the driver's view out of the windows. Specifically, nothing in California fire service regulations mentions anything prohibiting or restricting the placement of the US flag on a fire apparatus nor does any of the other mentioned sections regarding the US flag. The only restricting statutes on the flag's placement is the vehicle code restrictions on obstructing the driver's view and unsafe conditions. Specifically, section 26708(a) of the Vehicle Code prohibits all motor vehicles to operate with “any object or material placed, displayed, installed, affixed, or applied in or upon the vehicle that obstructs or reduces the driver's clear view through the windshield or side windows.”

Based upon this analysis of both state and federal law, it is again my opinion that a flag may be placed on the driver's side top middle section of any fire engine as was presented in the photo and complies with section 26708 of the Vehicle Code. Please let me know if you'd like any further explanation on this opinion.

I am always glad to assist whenever I can.

Sincerely,

A handwritten signature in black ink, appearing to read "Ted W. Lieu". The signature is stylized with a large "T" and a long horizontal stroke at the end.

TED W. LIEU
Senator, 28th District

Seminole resolves flap over flag, will display banner on fire trucks - Tampa Bay Times

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Seminole resolves flap over flag, will display banner on fire trucks

By Anne Lindberg, Times Staff Writer

Published Monday, July 16, 2012

SEMINOLE — The flag flap between this city and its firefighters has ended and the American flag will now be properly displayed on fire vehicles.

The flags will likely be mounted on the trucks by the end of this week. Seminole City Manager Frank Edmunds said the city's maintenance department is making clamps so the flag can be fixed to the right front fender, as the U.S. Flag Code dictates.

"We've never taken the position that we do not want flags," Edmunds said Monday. But "if we're going to (display them), we're going to do it right."

A dispute over the flag blew up over the weekend when about 20 protesters, all friends of firefighters, waved flags for about an hour on 113th Street, near one of the city's fire stations. They were protesting an order to remove the flag from Seminole fire trucks. It was a dispute, they said, that had been brewing for months.

But Edmunds said that's not true.

"I'm not so sure that (the flag) was ever an issue," Edmunds said. "I've taken the position that it's not really so much a flag issue as it is an employee issue of taking liberties with city property without departmental approval. ... There's a misconception that we had flags on all our vehicles and we've removed them. That's not the case."

Edmunds said employees were asked months ago to submit a proposal to display flags on vehicles, but that never happened. Instead, last week a firefighter put a flag in the window of a fire truck. Fire Chief George Bessler had it removed.

"It was about respect and it wasn't being done in a respectful manner," Bessler said.

Edmunds said someone posted an item on "social media that drastically escalated the issue."

Now Bessler said he's had calls from across the United States about the situation.

And Edmunds said he and the chief agree that employees must have some interest in having the flag on fire vehicles or the dispute never would have happened.

"We're going to install flags on all of our fire vehicles in accordance with the (Flag) Code," Edmunds said.

Despite the turmoil, Bessler said he sees some good in the situation. One is that Seminole's firefighters know they're supported. Another is that people are now more aware of the proper way to display the flag.

Anne Lindberg can be reached at alindberg@tampabay.com or (727) 893-8450.

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<http://www.tampabay.com/news/localgovernment/seminole-resolves-flap-over-flag-will-display-banner-on...> 10/31/2012

Three Seminole district fire chiefs disciplined over flag flap



Last Updated: Sunday, August 12, 2012

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SEMINOLE – The fallout from the city of Seminole's American flag controversy now includes three district fire chiefs receiving written reprimands.

According to the *Tampa Bay Times*, Rick Koda, Richard Schomp and Greg Smith were disciplined for allowing an American flag to be improperly displayed on a fire truck.

Seminole has an established policy for displaying the flag, and it was not followed, fire chief George Bessler was quoted as saying in the *Times*.

The controversy erupted last month when a resident complained that a city ladder truck was displaying the flag in a way that violated the U.S. flag code. A second complaint was received when a firefighter hung a flag in the window of a truck, and Bessler ordered the flags removed until they could be properly displayed.

But misinformation about that decision spread through Facebook, and Seminole officials took a beating locally and nationally. Some local residents even staged a protest.

The city's fire trucks have since been equipped with flags mounted in accordance with the code. Firefighters also wear a flag patch on their uniforms.

All parties agree that no one intended any disrespect toward the flag.

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