

**AN ORDINANCE AMENDING THE CODE OF THE
TOWNSHIP OF SPARTA RESPECTING
THE DISPLAY OF FLAGS ON TOWNSHIP FLAGPOLES**

WHEREAS, the Government Speech Doctrine establishes that a government organization, such as the Township of Sparta, may advance its own expression without requiring viewpoint neutrality when the government itself is the speaker, so long as its expression does not show religious preference (See, *Matal v. Tam*, 137 S. Ct. 1744, 1757 (2017)); and

WHEREAS, the Township Council maintains flagpoles on various public building and within public parks and playgrounds within the Township of Sparta; and

WHEREAS, the Township Council wishes to permit the display of commemorative flags upon Township owned flagpoles as a form of government expression; and

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Sparta, Sussex County, New Jersey, as follows:

SECTION 1. The Code of the Township of Sparta is hereby amended to read in full as follows:

Display of flags.

- (a) In addition to the Flag of the United States, the Township of Sparta may display such additional flags on Township owned flagpoles on public buildings and in public parks and playgrounds as the Township Council may authorize by resolution as a form of government speech, provided the display of same shall not show religious preference.
- (b) The Flag of the United States shall be displayed highest and any such additional flags shall be flown below the Flag of the United States. The Flag of the United States shall be displayed in accordance with and in the manner prescribed in Chapter 1 of Title 4 of the United States Code (4 U.S.C.S. §§ 1-10).
- (c) The Township's flagpoles are not intended to serve as a forum for free expression by the public. Rather, the Township's flagpoles are to be used exclusively by the Township, where the Council may display a commemorative flag as a form of government expression. The Township will not display a commemorative flag based on a request from a third party, nor will the Township use its flagpoles to sponsor the expression of a third party.
- (d) No person shall display or place upon any flagpole owned by the Township of Sparta any flag or other object not otherwise authorized as an expression of government speech by the Township Council of the Township of Sparta and without the express written permission of the Township of Sparta.
- (e) Owing to their very nature as expressive locations meant for contemplation and reflection, monuments and memorials and other similar structures donated as a remembrance, shall not be deemed locations for flying expressive flags via resolution.
- (f) In addition to the Flag of the United States and such other flags as may be authorized by resolution of the Township Council, the following flags are hereby permitted to be displayed upon flagpoles owned by the Township of Sparta as a form of expression of government speech, in the manner set forth above:
 - 1) Flag of the State of New Jersey
 - 2) P.O.W./M.I.A (Prisoner of War/Missing in Action)) flag as provided in Title 36, Chapter 9, §902 of the United State Code (36 U.S.C.S. §902)

- (g) Nothing contained herein is intended to abridge the right of the citizens of the Township of Sparta to petition or request the Township Council to authorize an expression of government speech.

SECTION 2. Policy – The attached “Flag Flying Policy” is hereby approved and adopted as the official policy of the Township and shall remain operative and in effect until such time as the Council takes further action to amend or revise said policy.

SECTION 3. Inconsistency - All ordinances or parts thereof, inconsistent herewith are hereby repealed to the extent of such inconsistency.

SECTION 4. Severability - If any clause, sentence, section or other portion of this ordinance, or the application thereof to any person or circumstance, shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or repeal the remainder of this ordinance.

SECTION 5. Effective Date - This ordinance shall take effect twenty (20) days following passage and publication as required by law.

NOTICE

NOTICE is hereby given that the above ordinance was introduced and passed upon first reading at a meeting of the Mayor and Council of the Township of Sparta, in the County of Sussex, New Jersey, held on February 14, 2023. It will be further considered for final passage after public hearing at a meeting of the Mayor and Council to be held in the Municipal Building, 65 Main Street, in the Township of Sparta, February 28, 2023, at 7:30 P.M., and during the preceding week copies of the ordinance will be made available at the Clerk's office in the Municipal Building to members of the general public.

KATHLEEN CHAMBERS, RMC
MUNICIPAL CLERK

NOTICE

NOTICE is hereby given that the above entitled ordinance was introduced and passed at a meeting of the Township Council of the Township of Sparta, held at the Municipal Building, 65 Main Street, Sparta, NJ on February 14, 2023. The same came up for final passage and adoption at a regularly scheduled meeting of the Township Council of the Township of Sparta, held on February 28, 2023 at 7:30 p.m., at the Municipal Building, 65 Main Street, Sparta, NJ and after all persons present were given an opportunity to be heard concerning the same, it was finally passed and adopted and will be in full force in the Township according to law.

KATHLEEN CHAMBERS, RMC
MUNICIPAL CLERK