

**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 conforms to the provisions of Sections 2 and 3 below.
- (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 an expression of the Township Council's official sentiments which shall constitute government speech. See *Matal v. Tam*, 137 S. Ct. 1744, 1757 (2017)). 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) Commemorative flags shall be displayed for a period of time that is reasonable and customary for the subject this is to be commemorated.
- (f) 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.
- (g) 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)
- (h) 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.** The following flags are considered commemorative flags for purposes of this ordinance and may be displayed pursuant to the policies and procedures identified herein as an expression of Sparta Township's official sentiments:

- (a) Flags of Governments Recognized by the United States. Flags of the governments recognized by the United States.
- (b) Flags of Sister Cities: The flags of official Sister Cities of Sparta may be displayed in conjunction with an event involving the Sister City.
- (c) Flags Displayed in Conjunction With Official Ceremonial Items: Other flags may be displayed in conjunction with official actions, ceremonial items, or proclamations of Sparta Town Council.
- (d) Flags of Sports Teams: The flag of a Sparta Township sports team may be displayed in commemoration of a significant achievement.
- (e) Flags Consistent with Sparta Township's Mission and Priorities: Flags may be displayed that identify with a specific historical event, cause, nation or group of people that Town Council choses to honor or commemorate consistent with Sparta Township's mission and priorities.

**SECTION 3. The following are not allowed as commemorative flags and will not be considered by Town Council:**

- (a) Flags of a particular religious movement or creed to avoid the appearance of Sparta Township government endorsing religion or a particular religious movement or creed;
- (b) Flags of a political party to avoid the appearance of City government endorsing a political party; and

- (c) Flags advocating a certain outcome in an election.

#### **SECTION 4. Flag Policy**

##### **A. Purpose**

1. In addition to the procedures contained within other sections of the Ordinance, the Township of Sparta hereby establishes the following guidelines regarding the display of commemorative flags on Township-owned or Township-maintained facilities.
2. The Township Council shall only consider a request to display a commemorative flag if a majority of the Township Council members agree to place the issue on the agenda for a regular or special Township Council meeting. Further procedural requirements are outlined in Subsection B.
3. At a noticed and agendized Township Council meeting, a majority of Council members would need to adopt a Resolution in order to authorize the flying of the commemorative flag.
4. Commemorative flags must be temporarily donated for the Township's use and be clean, without holes and tears, and be made of an all-weather fabric. The Township will not be responsible for the condition of the commemorative flag once flown and may dispose of any such flag not picked up within thirty (30) days after it has been flown. Flags cannot be larger than 4 ft. x 6 ft. The Township will not purchase the commemorative flags.
5. All commemorative flags must be smaller in size than the American Flag and the New Jersey State flag that is displayed at the Municipal Building. A commemorative flag shall not be flown on the same flag pole as the flag of the United States or the P.O.W./M.I.A. flag. A commemorative flag may be flown underneath the New Jersey State flag on the same flag pole.

When the flag of the United States is at half-mast, the commemorative flag will also be flown at half-mast.

##### **B. Procedure**

1. An individual or group who would like to request a commemorative flag to be approved by the Township Council should make the request to the Township Manager. The Township Manager shall distribute requests made by the public to all members of the Township Council. All requests will then be placed on an agenda for a regular or special Township Council meeting and the request will be considered by the Township Council pursuant to Section A, and this Ordinance.
2. The Township Council will only display commemorative flags that it approves as its own government speech.

3. Flags will be flown according to the U.S. Flag Code.

**SECTION 5.** Inconsistency - All ordinances or parts thereof, inconsistent herewith are hereby repealed to the extent of such inconsistency.

**SECTION 6.** 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 7.** 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 March 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, March 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