

CITY OF SARASOTA
Sarasota, Florida

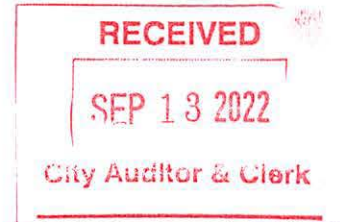
Inter-Office Memorandum

September 7, 2022

TO: Shayla Griggs, City Auditor and Clerk

FROM: Robert M. Fournier, City Attorney 

RE: Resolution No. 22R-3114
Flag Display at City Hall



Enclosed for execution is the original of the resolution referred to above which was amended and adopted by the City Commission at the regular meeting of September 7, 2022.

Thank you for your attention to the above.

/lg
enc.: a/s

RESOLUTION NO. 22R-3114

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SARASOTA, FLORIDA, STATING A POLICY FOR THE USE OF THE FLAGPOLES IN FRONT OF CITY HALL, INCLUDING USE OF THE CITY FLAGPOLE TO TEMPORARILY FLY FLAGS OTHER THAN THE CITY FLAG; PROVIDING THAT THE MESSAGE CONVEYED BY SUCH TEMPORARY FLAGS IS INTENDED TO CONSTITUTE GOVERNMENTAL SPEECH AND NOT PRIVATE SPEECH; PROVIDING FOR READING OF THIS RESOLUTION BY TITLE ONLY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Sarasota maintains three flagpoles in front of City Hall; and,

WHEREAS, the first of these three flagpoles flies the flag of the United States of America and the POW-MIA flag; the second flagpole flies the flag of the State of Florida; and the third flagpole flies a flag containing the logo of the City of Sarasota; and,

WHEREAS, the City has from time to time received requests from private parties or entities to display a particular flag on the third flagpole that is utilized to display the City of Sarasota flag but the City Commission has not adopted a policy to govern such requests; and,

WHEREAS, unlike a private property owner who has discretion as to what message they might wish to convey through flying a flag, a municipality must consider constitutional requirements that turn on the specific facts of each particular case; and,

WHEREAS, On May 2, 2022, the U.S. Supreme Court issued its opinion in the case of *Shurtleff v. City of Boston* and this decision has ramifications for municipalities and other public entities that permit or consider permitting the flying or displaying of flags in public places where official business is conducted; and,

WHEREAS, like the City of Sarasota, the City of Boston flies the flags of the nation, the state and the city at its City Hall, but such flags are displayed in an open area known as City Hall Plaza; and,

WHEREAS, the City of Boston has often made its City Hall Plaza available for use by private groups for events and the City of Boston has allowed numerous groups to fly their own flag on the third flagpole, rather than the City flag, during the groups' events; and,

WHEREAS, the City of Boston had advised the public that its aim was to accommodate all applicants as it considered the flagpole to be a public forum; and,

WHEREAS, in 2017, Harold Shurtleff applied to use the Boston City Hall Plaza for an event on behalf of an organization known as Camp Constitution and his application represented that the event sponsor intended to fly the Christian flag and that the purpose of the event was to "commemorate the civic and social contributions of the Christian community;" and,

WHEREAS, the City of Boston denied the request to fly the Christian flag on the basis that allowing the flying of a religious flag on public property would violate the Establishment Clause in the First Amendment of the Constitution which, among other things, has been generally construed to prohibit government from taking action to favor or support one religion over another; and,

WHEREAS, Mr. Shurtleff sued the City of Boston, alleging that the prohibition against flying the Christian flag was a denial of his First Amendment protected right to free speech; and,

WHEREAS, the lower courts sided with the City of Boston, finding that the various flags the City had allowed to be flown on its third flagpole constituted "government speech" meaning that when a governmental entity speaks for itself, it may espouse the view dictated by its own policies and may choose what it does and does not wish to say and that therefore the Camp Constitution request could be lawfully denied; and,

WHEREAS, upon appeal, the Supreme Court reversed the lower courts' ruling, noting that the City had permitted dozens of different flags to be flown and had never before exercised any control over the messages conveyed by the flags and that the City had no written policy or internal guidelines about what flags could be flown by either the City or requested by private groups and no policy or guidelines about what those flags could communicate; and,

WHEREAS, after stating that there was "a lack of meaningful involvement in the selection of the flags or the crafting of the messages" on the part of the City of Boston, the Supreme Court held that these flags constituted private speech, not government speech; and,

WHEREAS, once the Supreme Court had found that the private group flags constituted private speech on public property rather than governmental speech, the next question became whether the City of Boston had the right to limit or restrict the private speech; and,

WHEREAS, the Supreme Court answered this question by holding that when a public entity allows its public property to be used as a public forum, the public entity may not engage in discrimination based on the viewpoint of those utilizing its public facilities, including religious viewpoint, and that to do so would violate the First Amendment; and,

WHEREAS, in order to be in compliance with the Supreme Court's ruling in *Shurtleff v. City of Boston*, a municipality that desires to allow private parties to request to fly a flag at City Hall must avoid creating a public forum (limited or otherwise) on public property and establish policies and procedures to govern the display of alternate temporary flags; and,

WHEREAS, the City Commission desires to adopt this Resolution as a formal expression of City policy regarding the use of the third flagpole in front of City Hall during those times when the City of Sarasota flag is not being displayed to allow a substitute flag to be displayed for a limited temporary period of time; and.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF SARASOTA, FLORIDA:

Section 1. **General Statement of Policy:** The City Commission adopts this Resolution as a statement of policy with regard to the display of flags on the three flagpoles in front of the Sarasota City Hall. One flagpole shall be used to fly the flag of the United States of America and the POW/MIA flag. A second flagpole shall be used to fly the flag of the State of Florida. The third flag pole shall be used to fly the flag of the City of Sarasota, but may also be used for temporary periods consistent with the policy, terms and conditions set forth in this Resolution. It is the intent of this Resolution that when a flag is flown for temporary periods as authorized herein, that the message conveyed by such flag is an expression of the official view of the City Commission and accordingly, that such message shall be classified as governmental speech and not as private speech.

Section 2. **Subject Matter of Permitted Flags:** The City's flagpoles are not intended to serve as a forum for free expression by the public. If previously authorized

in accordance with the process found in Section 4 of this Resolution, the following flags may be temporarily displayed by the City on the flagpole that ordinarily flies the City's flag:

1. Flags of nations with governments recognized by the United States of America

2. Flags of officially designated Sister Cities of the City of Sarasota when displayed in connection with a visit or an event involving the Sister City

3. Flags displayed in connection with an official proclamation of the City Commission that otherwise complies with the terms of this Resolution

4. Flags of professional sports teams to commemorate a significant achievement of the team when acknowledged or recognized by the City Commission

5. Commemorative flags that may be authorized by the City Commission as an expression of the City's official sentiments. A commemorative flag means a flag that identifies with:

(a) a specific date

(b) an historical event

(c) an identified cause (meaning a principle, ideal, goal or movement to which a person or group is dedicated; or meaning the welfare of a person or group seen as a subject of concern, e.g. the plight of war refugees)

(d) an identified nation

(e) an identified group of people

By authorizing the display of a commemorative flag, the City Commission is stating that it desires to honor, commemorate or confer special recognition on the subject date,

historical event, identified cause, nation or group of people. The City Commission shall be the sole arbiter of whether the message of a proposed flag conforms to the limitations of this section. Before a proposed flag is flown, the City Commission must make a finding by super-majority vote that the proposed flag is allowable in accordance with the terms of this Section 2.

Section 3. Prohibited Flags

A flag that is authorized to be flown pursuant to this Resolution shall not contain messaging or content of the following nature:

(a) promoting or opposing a political candidate, political party, other political organization or a political issue to be voted on at an election or referendum

(b) promoting or opposing a particular religion or religious organization or having a religious theme

(c) promoting discrimination or discriminatory practices against any group of people

(d) promoting other illegal or unlawful activity

(e) relating to adult or sexually explicit matters or to lewd or obscene themes or materials

(f) relating to drugs or alcohol or to the use of drugs or alcohol

(g) commercial messaging or advertising of products

Section 4. Process: A request to fly a flag at City Hall in accordance with this Resolution shall be sponsored by a City Commissioner and placed on the agenda of a regular or special City Commission meeting by the Office of the City Auditor and Clerk.

Before authorizing the temporary display of a flag at City Hall, the City Commission shall be authorized to request and to receive the following information, if requested:

(a) the full name or names, physical address, phone number, electronic mail address and any other contact information for any person(s) or organization who may have contacted the sponsoring Commissioner regarding the flag display prior to placement of the subject on the City Commission agenda

(b) a full color image accurately depicting the flag and if applicable, the name of the flag

(c) a written explanation of the purpose of the flag, including what the flag stands for, brief history of the flag, any local, national or international groups or individuals with whom the flag is affiliated and any other information that may be relevant to the decision of the City Commission regarding the display of the flag

(d) the dates on which the flag is requested to be displayed. Display of a flag shall be limited to more than thirty (30) days. The City Commission is authorized to approve a display for less time than the time requested by the sponsoring Commissioner.

The affirmative vote of four (4) City Commissioners shall be required to authorize the temporary display of the subject flag.

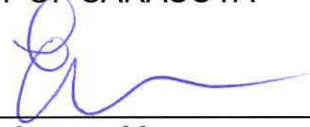
Section 5. One flag at a time: Only one flag at a time may be displayed in accordance with an authorization from the City Commission pursuant to this Resolution.

Section 6. Sole and Exclusive means to display flags: This Resolution sets forth the sole and exclusive process by which a flag may be temporarily displayed at the Sarasota City Hall.

Section 7. Effective Date: This Resolution shall become effective immediately upon adoption.

ADOPTED by the City Commission of the City of Sarasota, upon reading by title only, after posting on the bulletin board at City Hall for at least three (3) days prior to the adoption, as authorized by the Charter of the City of Sarasota, this 6th day of September, 2022.

CITY OF SARASOTA



Erik Arroyo, Mayor

ATTEST:



Shayla Griggs
City Auditor and Clerk

- Yes Mayor Erik Arroyo
- Yes Vice Mayor Kyle Scott Battie
- Yes Commissioner Jen Ahearn-Koch
- Yes Commissioner Liz Alpert
- Yes Commissioner Hagen Brody