

# Unofficial Flags on Town and School Property

By: Taylorann Vibert, Graduate Fellow  
May 7, 2024 | 2024-R-0078

## Issue

Summarize the law governing unofficial flags on town property and school property in Connecticut.

The Office of Legislative Research is not authorized to provide legal opinions and this report should not be considered one.

## Summary

Although the federal government provides guidance on how to fly unofficial flags in relation to the U.S. flag, both federal and state law are silent on the issue of unofficial flags on town property. This issue is primarily governed by town policies and municipal ordinances. In Connecticut, these policies and ordinances typically either (1) prohibit all unofficial flags but provide exceptions for certain military and departmental flags or (2) allow unofficial flags on a case-by-case basis upon approval by the town council or board of selectmen.

Town ordinances may include disclaimers that the flags are not intended to serve as a forum for public expression, but rather as a non-public forum to display government speech. A 2022 U.S. Supreme Court case, [Shurtleff v. City of Boston](#), discussed below, held that a municipality may raise one unofficial flag but decline to raise another flag if it is done as an expression of governmental speech, rather than as a restriction on private speech in a public forum.

Some towns have policies and ordinances that are specific to flags flown on school property. Further, in light of the decision in *Shurtleff*, the Connecticut Association of Boards of Education (CABE) [advises boards of education to adopt policies](#) on unofficial flags flown on school property and provides model policies and procedures districts may consider (beginning on page 5).

## Flags on Town Property Generally

Neither federal nor state law restricts whether or which flags may be flown in addition to the U.S. flag. The U.S. Flag Code provides guidance on how additional flags should be displayed with the U.S. flag but does not restrict other flags from being flown with it ([4 U.S.C. §§ 4-10](#)). For an overview of federal flag law, see this [Congressional Research Service report](#).

The issue of whether and which unofficial flags may be flown on town property is primarily governed by municipal law, typically through policies or ordinances.

### *Examples of Towns' Flag Policies and Ordinances*

***Unofficial Flags Generally Prohibited.*** Several towns, including Berlin, Southington, and Tolland, among others, have adopted policies or ordinances that generally prohibit unofficial flags with certain exceptions.

[Berlin's policy](#) generally prohibits flying unofficial flags but provides exceptions for (1) certain military flags (e.g., POW/MIA flags, U.S. armed forces, military units) on property used as a veteran's memorial, at the discretion of the town's veterans committee; (2) the official department flag and, with approval from the town council, flags honoring first responders at police and fire departments; and (3) Thin Blue Line, Thin Red Line, and FDNY/MIA 9/11 flags at fire departments. It specifies flagpoles are not intended to serve as a forum for free expression.

[Southington's ordinance](#) prohibits the flying of unofficial flags but makes exceptions for POW/MIA flags, gives the town's veterans committee discretion to raise certain military flags on town property, and also allows the fire and police departments and schools to fly their official flags. It specifies that flagpoles are not intended to serve as a forum for free expression.

[Tolland's policy](#) prohibits unofficial flags except (1) certain military flags at a veteran's memorial and at the discretion of the veteran's committee; (2) service, remembrance, or public safety department flags at memorial parks; and (3) the public safety department flag at any of their stations or offices.

***Unofficial Flags Generally Allowed.*** Other towns, including Easton, New Britain, and South Windsor, among others, have policies or ordinances that generally allow unofficial flags but impose certain restrictions or requirements.

[Manchester's policy](#) (beginning on page 19) allows unofficial (i.e., commemorative and organizational) flags on a designated flagpole upon request to and approval by the board of

directors. The board will not consider certain categories of flags (e.g., those of a particular religion, political party, business, or those that enable violence, discrimination, prejudice, or racism) and the policy does not apply to board of education-controlled properties. The policy specifies that flagpoles are not intended to serve as a forum for free expression.

[New Britain's policy](#) allows unofficial flags to be flown outside of city hall upon request but the city will not fly flags it determines are inappropriate, offensive, discriminatory, or controversial.

[An ordinance in South Windsor](#) allows unofficial (i.e., commemorative and organizational) flags on one designated flagpole upon request to, and supermajority plus one approval by, the town council. The council will not consider certain categories of flags (e.g., those of a particular religion, political party, or business, or those that enable violence, discrimination, prejudice, or racism). The ordinance specifies that flagpoles are not intended to serve as a forum for free expression.

### ***Government Speech and Private Speech***

While the law does not restrict towns from flying unofficial flags, it may prohibit towns from rejecting flags from being flown on town property if the town flagpole is used for private speech, rather than government speech.

The U.S. Supreme Court established that a government entity is entitled to say what it wishes and to select the views it wants to express ([Rosenberger v. Rector & Visitors of Univ. of Va., 515 U.S. 819, 829 \(1995\)](#)). A central issue in this “government speech doctrine” is identifying when speech is government speech versus private speech. In *Shurtleff v. City of Boston*, the Supreme Court recently distinguished between the two in the context of a municipal flag policy ([Shurtleff v. City of Boston, 142 S. Ct. 55 \(2021\)](#)).

In *Shurtleff*, the Court held that the city violated the First Amendment by refusing an individual’s request to fly what he described as a Christian flag when it had routinely approved applications to fly other unofficial flags on one of the three flagpoles outside city hall. The determination of whether the flag-raising was government speech was a fact-specific inquiry, focusing on whether the municipality intended to convey the flags’ messages as its own. The Court classified the third-party flag raising on Boston’s flagpole as private speech because the city did not have any meaningful involvement in the selection of the flags or the messages those flags would communicate. Since the flag-raising was private speech, denying the request to fly this flag violated the Free Speech Clause of the First Amendment as it “constitutes impermissible viewpoint discrimination.”

Generally, under the *Shurtleff* decision, a government entity may continue to use a flagpole to convey the government’s message and display the flags that the governing body selects. If a government’s flag-raising program constitutes government speech, then they may refuse to fly flagpoles based on viewpoint. However, if a government entity wishes to use their flagpole as a forum for private expression and allow private organizations and individuals to display flags, they have limited discretion to reject flags and cannot do so based on the content of the flag (i.e., the municipality may not be able to reject flags with controversial messaging). For more information about the decision in *Shurtleff v. City of Boston*, see OLR Report [2022-R-0241](#).

In response to the decision in *Shurtleff*, some towns are changing their flag policies. For example, in 2022, Enfield adopted [resolution 6230](#) (beginning on page 9) to fly the rainbow flag for the month of June “to inspire equity, create alliances, [and] celebrate diversity.” However, in January 2024, the Town Council adopted [resolution 6841](#) (beginning on page 16) which prohibits unofficial flags and limits the flags flown on town property to the American flag, the State of Connecticut flag, the MIA/POW flag, and the flags of the various military services of the United States.

## Flags on School Property

### *Federal and State Law*

State law requires that each local and regional board of education provide a United States flag for each schoolroom and requires the flags to be displayed in schoolrooms during each day school is in session ([CGS § 10-230](#)). A similar requirement exists in the U.S. Flag Code, which specifies that the U.S. flag should be displayed at every public institution, polling places on election days, and in schoolhouses during school days, among other places ([4 U.S.C. § 6\(e\)-\(g\)](#)).

### *Municipal Law*

Town policies and ordinances may or may not apply to flags specifically on school buildings or property. For example, policies that regulate flagpoles “owned or maintained by the town” may apply to the extent flagpoles on school property fit within that definition.

Towns may also have a school-specific ordinance or resolution. For example, Southington’s [ordinance](#) specifies that any town property serving as an official school may only fly (1) the official school flag or (2) on the interior of school buildings, the official country flag of other sovereign nations with the approval of the school’s principal. As another example, in 2022, Stonington’s board of education adopted a resolution allowing teachers to display LGBTQ+ rainbow flags (see [pages 1-2](#)).

TV:co