

**BOROUGH OF SWARTHMORE  
RESOLUTION NO. 2011- 09**

**A RESOLUTION OF THE BOROUGH COUNCIL OF THE BOROUGH OF  
SWARTHMORE ADOPTING REGULATIONS REGARDING  
USE OF BOROUGH PROPERTY BY PRIVATE CITIZENS AND THE  
INSTALLATION OF RELIGIOUS, POLITICAL OR OTHER DISPLAYS ON  
BOROUGH-OWNED PROPERTIES**

RECITALS:

WHEREAS, the First Amendment of the United States Constitution (the "First Amendment") states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances;" and

WHEREAS, thus the First Amendment prohibits governments from making a "law respecting an establishment of religion (the "Establishment Clause"), while guaranteeing to the citizens the freedoms of speech, religion and assembly; and

WHEREAS, the Borough recognizes that properties and public rights-of-way (collectively referred to herein as "Borough-owned properties") owned by the Borough are traditionally used in connection with the expression of the citizens' freedoms of speech, religion and assembly. The Borough has and shall continue to allow its citizens to use Borough-owned properties for purposes of exercising their First Amendment rights in this regard. Such uses that have occurred on Borough-owned properties include, as examples, Independence Day parades and concerts, movie showings, religious gatherings, political gatherings, political protests, and the like; and

WHEREAS, some of the traditional uses that have occurred on Borough-owned properties have involved the installation of displays, such as an Independence Day parade review stand, political candidate yard signs, a decorated Christmas tree and a menorah; and

WHEREAS, while such displays are permitted and welcome, if such displays are allowed to remain on Borough property unattended, such displays could interfere with the Borough's ability to maintain its property, cause damage to grass and other plantings and interfere with other uses on such property such as recreational activities and pedestrian traffic. Further, absent the adoption of clear regulations regarding private citizen's rights to assemble and display articles on Borough property, the Borough would face: uncertainty as to when such displays could be removed, the potential for unsightly displays due to prolonged exposure to elements and wear and tear, and potential claims of damage to private property if Borough staff were to remove such displays. Finally, if the Borough allows private citizens to install religious displays on borough property, such

religious display standing alone could be perceived as endorsement of that particular religion by the Borough, which endorsement is prohibited by the Establishment Clause; and

NOW, THEREFORE, the Borough hereby adopts the following reasonable, content-neutral, time, place and manner restrictions regarding the installation of displays (being political, religious or other displays) on Borough property:

1. The foregoing recitals are hereby approved and incorporated herein by reference as though set forth herein in full.

2. These Regulations shall apply to Borough-owned outdoor properties which constitute traditional public forums, being parks, the Borough Hall lawn and public streets and sidewalks (referred to collectively herein as “Borough Properties”).

3. Private citizens are welcome and invited to exercise their First Amendment rights of free speech, religious expression and assembly on Borough Properties for such purposes, without limitation, as political campaigning, prayer meetings, holiday festivities, distributing pamphlets and the like.

4. To avoid overcrowding and public disorder, groups of twenty (20) or more private citizens who wish to assemble on a Borough Property must apply in writing for a permit from the Borough Manager at least five (5) calendar days in advance of the intended gathering date to reserve such Borough Property for such assembly or display. The applicant shall disclose in writing the proposed location, date and duration of such assembly. In the event of multiple applications for the same time and location, preference shall be given to any person or group who or which has held such assembly at such location in a prior year, and the Borough staff shall provide such other applicant(s) with an alternative location or time for their assembly. In addition, parties of any size which desire to conduct a parade, procession, public assemblage or public meeting on any street or highway of the Borough shall comply with the permitting requirements of Chapter 656 of the Codified Ordinances of the Borough of Swarthmore.

5. Private citizens are welcome to erect displays, including without limitation, displays of religious articles, flags, political signs and banners, and the like, for the duration of the time that such persons are physically present at the assembly on Borough Property. At the conclusion of such assembly, the persons who erected such displays shall remove the displays in their entirety. If the displays are not removed at the conclusion of the assembly, the Borough’s staff shall remove such displays and dispose of them as the Borough may determine in its sole discretion.

6. For assemblies that may extend beyond one day, such as a “sit-in” or an overnight prayer vigil, items relating to such assembly shall be deemed not to be “unattended” if one or more persons is physically present at such assembly for a substantial amount of time during each day of such assembly. The Borough reserves the right to limit the duration of such assemblies if the Borough reasonably believes that the

assembly could interfere with the Borough's ability to maintain its property, cause damage to grass and other plantings, interfere with other uses on such property such as recreational activities and pedestrian traffic or if any other compelling public interest would be served thereby.

7. To avoid the possibility of violating the Establishment Clause, the Borough itself shall not install any religious articles or religious displays on Borough Properties.

8. These Regulations shall be effective immediately upon their adoption by Council.

9. All assemblies or gatherings occurring on Borough Properties shall be conducted in compliance with all applicable laws and ordinances of the United States, Pennsylvania and the Borough of Swarthmore, and nothing contained herein should be construed as a waiver or repeal of any ordinance in effect in the Borough of Swarthmore.

10. The Borough reserves the right to impose additional restrictions to displays on Borough Properties in the event that Borough officials reasonably determine that any display poses a threat to public safety or damage or injury to persons or property.

APPROVED this 8<sup>th</sup> day of August, 2011.

ATTEST:

BY:

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Jane C. Billings  
Borough Manager

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Susan D. Smythe  
President of Council

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Richard H. Lowe  
Mayor