

**POLICY REGARDING OPENING INVOCATIONS
BEFORE MEETINGS OF THE [NAME OF DELIBERATIVE BODY]**

WHEREAS, the [name of deliberative body] (“the Council”) is an elected legislative and deliberative public body, serving the citizens of [locale, state]; and

WHEREAS, the Council wishes to solemnize its proceedings by allowing for an opening invocation before each meeting, for the benefit and blessing of the Council; and

WHEREAS, the Council now desires to adopt this formal, written policy to clarify and codify its invocation practices; and

WHEREAS, our country’s Founders recognized that we possess certain rights that cannot be awarded, surrendered, nor corrupted by human power, and the Founders explicitly attributed the origin of these, our inalienable rights, to a Creator. These rights ultimately ensure the self-government manifest in our deliberative bodies, upon which we desire to invoke divine guidance and blessing; and

WHEREAS, in *Marsh v. Chambers*, 463 U.S. 783 (1983), the United States Supreme Court validated the Nebraska Legislature’s practice of opening each day of its sessions with a prayer by a chaplain paid with taxpayer dollars, and specifically concluded, “The opening of sessions of legislative and other deliberative public bodies with prayer is deeply embedded in the history and tradition of this country. From colonial times through the founding of the Republic and ever since, the practice of legislative prayer has coexisted with the principles of disestablishment and religious freedom.” *Id.*, at 786; and

WHEREAS, the Council desires to avail itself of the Supreme Court’s recognition that it is constitutionally permissible for a public body to “invoke divine guidance” on its work. *Id.*, at 792. Such invocation “is not, in these circumstances, an ‘establishment’ of religion or a step toward establishment; it is simply a tolerable acknowledgment of beliefs widely held among the people of this country.” *Id.*; and

WHEREAS, the Supreme Court also famously observed in *Zorach v. Clauson*, 343 U.S. 306, (1952), “We are a religious people whose institutions presuppose a Supreme Being.” *Id.*, at 313-14; and

WHEREAS, the Supreme Court acknowledged in *Holy Trinity Church v. United States*, 143 U.S. 457 (1892), that the American people have long followed a “custom of opening sessions of all deliberative bodies and most conventions with prayer...,” *Id.*, at 471; and

WHEREAS, the Supreme Court has determined, “The content of [such] prayer is not of concern to judges where . . . there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief.” *Marsh*, 463 U.S. at 794-795; and

WHEREAS, the Supreme Court also proclaimed that it is not the job of the courts or deliberative public bodies “to embark on a sensitive evaluation or to parse the content of a particular prayer” offered before a deliberative public body. *Id.*; and

WHEREAS, on June 4, 1792, the first session of the Kentucky House of Representatives began with the appointment of John Ganno as the Chaplain of the Kentucky Legislature. Rev. Ganno’s duties were “that he attend and read prayers every morning at the time which may be appointed by the standing order of the House.” *Journal of the First Session of the House of Representatives at the First Session of the General Assembly for the Commonwealth of Kentucky, on Monday, the 4th of June, in the Year of Our Lord, One Thousand Seven Hundred and Ninety Two.*

WHEREAS, on September 8, 1890, a Constitutional Convention for the Commonwealth of Kentucky continued to observe this time-honored tradition by opening its proceedings with a resolution directing the Chairman of the Convention to “invite some clergyman to offer prayer, and invoke the divine blessing this Convention.” This resolution was unanimously passed and Rev. J. M. Lewis of Scott County, Kentucky proceeded by offering a prayer. *Official Report of the Proceedings and Debates in the Convention Assembled at Frankfort on the 8th day of September, 1890, to adopt, amend or change the Constitution of the State of Kentucky.*

WHEREAS, the Kentucky General Assembly continued the practice of providing an invocation after the adoption of the new constitution. On December 30, 1885, the General Assembly of the Commonwealth of Kentucky began its legislative session with a prayer offered by Rev. E.A. Penick, of the Episcopal Church. *Journal of the House of Representatives for the Commonwealth of Kentucky, December 30, 1885.*

WHEREAS, this council is not establishing a policy that defines the Constitutional limits for permissible public invocations, this council intends to adopt guidelines that are consistent with the guidance provided by the several courts that have considered the validity of public invocations; and

WHEREAS, this council is only bound by the decisions of the Sixth Circuit, the United States Court of Appeals in several federal circuits have provided general guidance to help ensure that policies concerning public invocations are consistent with the Constitution; and

WHEREAS, in *Snyder v. Murray City Corporation*, 159 F.3d 1227 (10th Cir. 1998), the United States Court of Appeals for the Tenth Circuit provided guidance when it clarified that the Constitution is concerned with a “more aggressive form of advancement, i.e., proselytization,” and the term “proselytize” as used by the Supreme Court in *Marsh* indicates “the real danger in this area is effort by the government to convert citizens to particular sectarian views.” *Id.*, at 1234 n.10; and

WHEREAS, numerous courts have approved an invocation practice that incorporates a neutral system to invite religious leaders from the local community to volunteer on a first come first served basis provide an invocation before public meetings. See *Simpson v. Chesterfield*

County Bd. of Supervisors, 404 F.3d 276 (4th Cir. 2004), *cert. denied*; *Pelphrey v. Cobb County, Ga.*, 547 F.3d 1263 (11th Cir. 2008); *Joyner v. Forsyth County, NC*, 653 F.3d. 341 (4th Cir. 2011), *cert. denied*.

WHEREAS, the Fourth Circuit showed little concern that the invocations before board meetings in *Simpson* included prayers that were “traditionally made to a divinity that is consistent with the Judeo-Christian tradition,” *Id.*, at 280, because *Marsh* also considered, and found constitutionally acceptable, the fact that the prayers in question fit broadly within ‘the Judeo-Christian tradition.’” *Id.*, at 283 (quoting *Marsh*, 463 U.S. at 793); and

WHEREAS, the Council intends to avoid the unique circumstances identified by the Fourth Circuit’s decision in *Wynne v. Town of Great Falls*, 376 F.3d 292 (4th Cir. 2002), *cert. denied*, that found an invocation practice unconstitutional because a town Board “improperly ‘exploited’ a ‘prayer opportunity’ to ‘advance’ one religion over others.” *Id.*, at 298 (quoting *Marsh*, 463 U.S. at 794) because:

(1) The Town Council “steadfastly refused” to allow any “deity associated with any specific faith other than Christianity” to be invoked, *Id.*, at 300, n.5; and

(2) Town Council members publicly chided and “ostracized” those who refused to participate in their prayers, *Id.*, at 295; and

(3) The refusal to participate in prayers “adversely affected [a citizens] right to participate in the Council meetings.” *Id.*, at 299, n.4; and

WHEREAS, in *Pelphrey v. Cobb County*, 547 F.3d 1263 (11th Cir. 2008), *Atheist of Florida v. City of Lakeland*, 713 F.3d 577 (11th Cir. 2013) and in *Rubin v. City of Lancaster*, 710 F.3d 1087 (9th Cir, 2013), the United State Courts of Appeals reviewed and specifically approved as constitutional the invocation policy of a county board that did not “compose or censor prayers” by attempting to limit prayers to “nondenominational” or “nonsectarian” prayers but rather allowed community members to offer invocations consistent with the dictates of their own conscience. *Id.* at 1267-74; and

WHEREAS, the Council intends, and has intended in past practice, to adopt a policy that does not proselytize or advance any particular faith, or show any purposeful preference of one religious view to the exclusion of others; and

WHEREAS, the Council intends to adopt a policy that will not show a purposeful preference of one religious view over another by not permitting the faith of the person offering the invocation to be considered when extending an invitation; and

WHEREAS, the Supreme Court recognized in *Marsh v. Chambers*, 463 U.S. at 786, this country’s history and tradition of opening sessions of deliberative public bodies with an invocation and affirmed in *Lynch v. Donnelly*, 465 U.S. 668 (1984), that “Our history is replete with official references to the value and invocation of Divine guidance in deliberations and pronouncements of the Founding Fathers and contemporary leaders.” *Id.*, at 675, and the Council believes that clergy that serve the local community are peculiarly suited through training,

tradition, and public service to petition for divine guidance upon the deliberations of the Council, and to accomplish the Council's objective to solemnize public occasions, express confidence in the future, and to encourage the recognition of what is worthy of appreciation in society. See *Lynch*, 465 U.S. at 693 (O'Connor concurring); and

WHEREAS, the Council accepts as binding the applicability of general principles of law and all the rights and obligations afforded under the United States and Kentucky Constitutions and statutes.

NOW, THEREFORE, BE IT RESOLVED by the [name of deliberative body] of [locale, state], that the Council hereby adopts the following written policy regarding opening invocations before meetings of the Council, to wit:

1. It is the intent of the Council to allow a private citizen to solemnize the proceedings of the [name of deliberative body]. It is the policy of the Council to allow for an invocation, which may include a prayer, a reflective moment of silence, or a short solemnizing message, to be offered before its meetings for the benefit of the Council.

2. Although the invocation may be listed in the program or schedule of events, it shall not be considered an agenda item for the meeting or part of the public business.

3. No member or employee of the Council or any other person in attendance at the meeting shall be required to participate in any prayer that is offered and such decision shall have no impact on the ability of the person to actively participate in the business of the Council.

4. The invocation shall be voluntarily delivered by an eligible member of the clergy or appointed representative of Assemblies List for the [locale]. To ensure that such person (the "invocation speaker") is selected from among a wide pool of representatives, on a rotating basis, the invocation speaker shall be selected according to the following procedure:

a. The Clerk to the [deliberative body] (the "Clerk") shall compile and maintain a database (the "Assemblies List") of the assemblies with an established presence in the [define the jurisdiction of the deliberative body] that regularly meet for the primary purpose of sharing a religious perspective (hereinafter referred to as a religious assembly).

b. The Assemblies List shall be compiled by referencing the listing for "churches," "congregations," or other religious assemblies in the annual the annual phonebook publication distributed by the company that holds the telecommunication franchise for the [locale], research from the Internet, and consultation with local chambers of commerce. All religious assemblies with an established presence in the [jurisdiction of the deliberative body] are eligible to be included in the Assemblies List, and any such religious assembly can confirm its inclusion by specific written request to the Clerk.

c. The policy is intended to be and shall be applied in a way that is all-inclusive of every diverse religious assembly serving the citizens of [locale]. The

Assembly List is compiled and used for purposes of logistics, efficiency, and equal opportunity for all of the community's religious leaders, who may themselves choose whether to respond to the Council's invitation and participate. Should a question arise as to the authenticity of a religious assembly, the Clerk shall refer to criteria used by the Internal Revenue Service in its determination of those organizations that would legitimately qualify for I.R.C. § 501(c)(3) tax-exempt status.

d. The Assemblies List shall also include the name and contact information of any chaplain who may serve one or more of the fire departments or law enforcement agencies of the [jurisdiction of the deliberative body].

e. The Assemblies List shall also include the name and contact information of any religious assembly located outside the [jurisdiction of the deliberative body] if such assembly is attended by at least one resident of the [locale] and such resident requests the inclusion of the assembly by specific written communication to the Clerk. [This paragraph may not be needed if the locale is large enough to have a diverse religious community]

f. The Assemblies List shall be updated, by reasonable efforts of the Clerk, in November of each calendar year.

g. Within thirty (30) days of the effective date of this policy, and on or about December 1 of each calendar year thereafter, the Clerk shall mail an invitation addressed to the "religious leader" of each religious assembly listed on the Assemblies List, as well as to the individual representatives included on the Assemblies List.

h. The invitation shall be dated at the top of the page, signed by the Clerk at the bottom of the page, and read as follows:

Dear religious leader,

The [name of the deliberative body] makes it a policy to invite members of the clergy or religious representative in [locale] to voluntarily offer an invocation before the beginning of its meetings, for the benefit and blessing of the Council. As the leader of one of the religious congregations with an established presence in the local community, or in your capacity as a chaplain for one of the local fire departments or law enforcement agencies, you are eligible to offer this important service at an upcoming meeting of the Council.

If you are willing to assist the Council in this regard, please send a written reply at your earliest convenience to the Clerk to the Council at the address included on this letterhead. Clergy are

scheduled on a first-come, first-serve basis. The dates of the Council's scheduled meetings for the upcoming year are listed on the following, attached page. If you have a preference among the dates, please state that request in your written reply.

This opportunity is voluntary, and you are free to offer the invocation according to the dictates of your own conscience. To maintain a spirit of respect and ecumenism, the Council requests only that the opportunity not be exploited as an effort to convert others to the particular faith of the invocation speaker, nor to disparage any faith or belief different than that of the invocation speaker.

On behalf of the [name of deliberative body], I thank you in advance for considering this invitation.

*Sincerely,
Clerk to the Council*

- i. As the invitation letter indicates, the respondents to the invitation shall be scheduled on a first-come, first-serve basis to deliver the invocation.
 - j. In the event an eligible member of the clergy believes that the clerk has not complied with the terms of this policy, the clergy member has the right to have the matter reviewed by the Council.
5. No invocation speaker shall receive compensation for his or her service.
 6. No guidelines or limitations shall be issued regarding an invocation's content, except that the Council shall request by the language of this policy that no invocation should proselytize or advance any faith, or disparage the religious faith or non-religious views of others.
 7. The Clerk shall make every reasonable effort to ensure that a variety of eligible invocation speakers are scheduled for the Council meetings. In any event, no invocation speaker shall be scheduled to offer an invocation at consecutive meetings of the Council, or at more than three (3) Council meetings in any calendar year.
 8. Neither the Council nor the Clerk shall engage in any prior inquiry, review of, or involvement in, the content of any invocation to be offered by an invocation speaker.
 9. To clarify the Council's intentions, as stated herein above, the following disclaimer shall be included in at least ten (10) point font at the bottom of any printed program or schedule of events published by the Council and shall be read aloud prior to the introduction of the invocation speaker:

"Any invocation that may be offered before the official start of the Council meeting shall be the voluntary offering of a private citizen, to and for the benefit of the Council. The views or beliefs expressed by the invocation speaker have not been previously reviewed

or approved by the Council and do not necessarily represent the religious beliefs or views of the Council in part or as a whole. No member of the community is required to attend or participate in the invocation and such decision will have no impact on their right to actively participate in the business of the Council. Copies of the policy governing invocations and setting forth the procedure to have a volunteer deliver an invocation are available upon written request submitted to the [deliberative body] Clerk. ”

10. Shortly before the opening gavel that officially begins the meeting and the agenda/business of the public, the Chairperson of the Council shall introduce the invocation speaker and the person selected to recite the Pledge of Allegiance following the invocation, and invite only those who wish to show respect for the traditional observances and/or the Council to stand.

11. This policy is not intended, and shall not be implemented or construed in any way, to affiliate the Council with, nor express the Council’s preference for, any faith or religious denomination. Rather, this policy is intended to acknowledge and express the Council’s respect for the diversity of religious denominations and faiths represented and practiced among the citizens of [locale].

NOW, THEREFORE, BE IT FURTHER RESOLVED that this policy shall become effective immediately upon adoption by the Council.