

RESOLUTION NO. 13-05

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BISHOP, STATE OF CALIFORNIA, ADOPTING A POLICY REGARDING INVOCATIONS AT MEETINGS OF THE CITY COUNCIL OF THE CITY OF BISHOP

WHEREAS, the City Council is an elected legislative and deliberative public body, serving the citizens of the City of Bishop; and

WHEREAS, legislative bodies in America have long maintained a tradition of solemnizing proceedings by allowing for an opening prayer before each meeting, for the benefit and blessing of the legislative body; and

WHEREAS, for many years, the City Council has followed a practice of selecting a member of local clergy to provide invocations at City Council meetings; and

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

WHEREAS, such prayer before deliberative public bodies has been consistently upheld as constitutional by American courts, including the United States Supreme Court; and

WHEREAS, in *Marsh v. Chambers*, 463 U.S. 783 (1983), the United States Supreme Court rejected a challenge to 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 Supreme Court further held, "To invoke divine guidance on a public body...is not, in these circumstances, an 'establishment' of religion or a step toward establishment; it is simply a tolerable acknowledgement of beliefs widely held among the people of this country." *Id.*, at 792; and

WHEREAS, the Supreme Court affirmed in *Lynch v. Donnelly*, 465 U.S. 668 (1984), "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

WHEREAS, the Supreme Court further stated, "Those government acknowledgements of religion serve, in the only ways reasonably possible in our culture, the legitimate secular purposes of solemnizing public occasions, expressing confidence in the future, and encouraging the recognition of what is worthy of appreciation in society. For that reason, and because of their history and ubiquity, those practices are not understood as conveying government approval of particular religious beliefs." *Id.*, at 693 (O'Connor, J., concurring); 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 should not be 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, the Supreme Court has counseled against the efforts of government officials to affirmatively screen, censor, prescribe and/or proscribe the specific content of public prayers offered by private speakers, as such government efforts would violate the First Amendment rights of those speakers, *See, e.g., Lee v. Weisman*, 505 U.S. 577, 588-589, (1992); and

WHEREAS, the City Council intends, and has intended in past practice, to adopt a policy that upholds an individual’s “free exercise” rights under the First Amendment; and

WHEREAS, the Supreme Court has repeatedly clarified that “there is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise clauses protect.” *Bd. Of Educ. Of Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 250 (1990); and

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

WHEREAS, The City Council recognizes its constitutional duty to interpret, construe, and amend its policies and ordinances to comply with constitutional requirements as they are announced.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Bishop, California that the City Council does hereby adopt the following written policy regarding opening invocations before meeting of the City Council, to wit:

1. In order to solemnize proceedings of the City Council, it is the policy of the City Council to allow for an invocation or prayer to be offered at its meetings for the benefit of the City Council and the community.

2. No member of the City Council, or City employee, or any other person in attendance at the meeting shall be required to participate in any prayer that is offered.

3. The prayer shall be voluntarily delivered by an eligible member of the clergy/religious leader in the City of Bishop or the County of Inyo. To ensure that such person (the "invocational speaker") is selected from among a wide pool of City of Bishop or the County of Inyo's clergy/religious leaders, on a rotating basis, the invocational speaker shall be selected according to the following procedure:

a. The City Clerk shall compile and maintain a database (the "Congregations List") of the religious congregations with an established presence in the City of Bishop and the County of Inyo.

b. The Congregations List shall be compiled by referencing the listing for "churches," "congregations," or other religious assemblies in the annual Yellow Pages phone book(s) published for the City of Bishop and the County of Inyo, research from the Internet, and consultation with local chambers of commerce. All religious congregations with an established presence in the City of Bishop or County of Inyo are eligible to be included in the Congregations List, and any such congregation can confirm its inclusion by specific written request to the City Clerk.

c. The Congregations 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 City of Bishop or the County of Inyo, or any nearby military facilities.

d. The Congregations List shall be updated annually by reasonable efforts of the City Clerk.

e. Within thirty (30) days of the effective date of this policy, the City Clerk shall mail an invitation addressed to the "religious leader" of each congregation listed on the Congregations List, as well as to the individual chaplains included on the Congregations List.

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

Dear religious leader,

The City Council makes it a policy to invite members of the clergy in the City of Bishop and the County of Inyo to voluntarily offer a prayer before the beginning of its meetings, for the benefit and blessing of the City Council and the community. As the leader of one of the religious congregations with an established presence in the local community of the City of Bishop or the County of Inyo, or in your capacity as a chaplain for one of the fire departments or law enforcement agencies of the City of Bishop or the County of Inyo, or any nearby military facility, you are eligible to offer this important service at an upcoming meeting of the City Council.

If you are willing to assist the City Council in this regard, please send a written reply at your earliest convenience to the City Clerk at the address included on this letterhead. Clergy are scheduled on a first-come, first-serve, or other random basis. The dates of the City Council's scheduled meetings for the upcoming year are listed on the 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 City Council requests only that the prayer opportunity not be exploited as an effort to convert others to the particular faith of the invitational speaker, nor to disparage any faith or belief different than that of the invitational speaker.

On behalf of the City Council, I thank you in advance for considering this invitation.

*Sincerely,
City Clerk*

g. Consistent with paragraph 6 hereof and, as the invitation letter indicates, the respondents to the invitation shall be scheduled on a first-come, first-serve or other random basis, to deliver the prayers.

h. If the selected invitational speaker does not appear at the scheduled meeting, the Mayor may ask for a volunteer from among the Council or the audience to deliver the invocation.

4. No invitational speaker shall receive compensation for his or her service.

5. The City Clerk shall make every reasonable effort to ensure that a variety of eligible invitational speakers are scheduled for the City Council meetings. In any event, no invitational speaker shall be scheduled to offer a prayer at consecutive meetings of the City Council, or at more than four (4) City Council meetings in any calendar year.

6. Neither the City Council nor the City Clerk shall engage in any prior inquiry, review of, or involvement in, the content of any prayer to be offered by an invitational speaker.

7. This policy shall be intended for all commissions for the City of Bishop, California.

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

9. Any and all previously adopted invocation policies, including, but not limited to, the *City of Bishop Guidelines for Invocations at City Meetings* adopted on July 23, 2012, are hereby rescinded.

NOW, THEREFORE, BE IT FURTHER RESOLVED that this policy shall become effective immediately upon approval by the City Council of the City of Bishop, California.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Bishop held on the 22nd day of April, 2013.



LAURA SMITH, MAYOR

ATTEST: Keith Caldwell, City Clerk

By: 

Robin Picken, Assistant City Clerk



STATE OF CALIFORNIA
COUNTY OF INYO

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I, Robin Picken, Assistant City Clerk for the City of Bishop, do hereby certify that the whole number of members of the City Council of said City of Bishop is five (5); that the foregoing Resolution No. 13-05 was duly passed and adopted by said City Council; approved and signed by the Mayor of said City; and attested by the City Clerk of said City, all at a regular meeting of said City Council, held on April 22, 2013, and that the same was so passed and adopted by the following roll call vote.

AYES: Ellis, Stottlemyre, Gardner, Glidewell, Smith

ABSENT: None

NOES: None

DISQUALIFIED: None

WITNESS, my hand and the seal of the City of Bishop this 23rd day of April 2013.



Robin Picken, Assistant City Clerk
CITY OF BISHOP

