

RESOLUTION NO. 1-2009

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF BENSON, ARIZONA, ADOPTING A WRITTEN POLICY REGARDING OPENING INVOCATIONS BEFORE MEETINGS OF THE BENSON CITY COUNCIL.

WHEREAS, the Benson City Council (the "Council") is an elected legislative and deliberative public body, serving the citizens of Benson, Arizona; and

WHEREAS, the Council has long maintained a tradition of solemnizing its proceedings by allowing for an opening prayer before each meeting, for the benefit and blessing of the Council; and

WHEREAS, the Council wishes to maintain a tradition of solemnizing its proceedings by allowing for an opening prayer 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 Legislature, upon which we desire to invoke divine guidance and blessing; 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 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 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, that “governments acknowledgments 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, in *Bacus v. Palo Verde Unified School Dist. Bd. of Educ.*, 52 Fed. Appx. 355 (9th Cir. 2002), the United States Court of Appeals for the Ninth Circuit recognized the continued vitality of *Marsh* and its applicability to analyzing the constitutionality of legislative prayer; and

WHEREAS, the Ninth Circuit held that prayer before deliberative bodies must not “disparage other religious faiths,” “proselytize,” nor “advance any one...faith or belief.” *Id.* At 357 (quoting *Marsh*, 463 U.S. at 794-95.); and

WHEREAS, the Council intends to avoid all of the unique circumstances that rendered the practices at issue in *Bacus* unconstitutional, including the facts that:

- 1) The prayer before meetings was “almost always” offered “in the Name of Jesus,” despite objection from the community. *Id.* At 356; and
- 2) The persistent invocations “in the Name of Jesus,” “necessarily had the effect of ‘making adherence to a religion relevant’ to...‘standing in the political community.’” *Id.* At 357; and
- 3) Such continued and “regular” Christian invocations, to the exclusion of all others, provided Christianity “with a special endorsed and privileged status...” *Id.*; and

- 4) The same individual almost always offered the invocation, and “no individuals of other religions ever gave the invocation.” *Id.* At 356-57; and
- 5) The prayer practice was thus not conducted “as is traditional in Congress,” where invocations are “rotated among leaders of different faiths, sects, and denominations.” *Id.* At 356 (citing *Marsh*, 463 U.S. 783 n.13.); and

WHEREAS, the 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 Council recognizes its constitutional duty to interpret, construe, and amend its policies and ordinances to comply with constitutional requirements as they are announced; 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 Arizona Constitutions and statutes.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Benson, Arizona, that the Council hereby adopts the following written policy regarding opening invocations before meetings of the Council, to wit:

1. In order to solemnize proceedings of the Benson City Council, it is the policy of the Council to allow for an invocation or prayer to be offered before its meetings for the benefit of the Council.
2. 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.
3. The prayer shall be voluntarily delivered by an eligible member of the clergy in Benson, Arizona. To ensure that such person (the “invocation speaker”) is selected from among a wide pool of Benson’s clergy, on a rotating basis, the invocation speaker shall be selected according to the following procedure:
 - a. The Clerk to the Benson City Council (the “Clerk”) shall compile and maintain a database (the “Congregations List”) of the religious congregations with an established presence in the local community of Benson, Arizona.
 - 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 Benson, Arizona, research from the internet, and consultation with local chambers of commerce. All religious congregations with an established presence in the local community of Benson, Arizona are eligible to be included in the Congregations List, and any such congregation can confirm its inclusion by specific written request to the Clerk.
 - c. The Congregation 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 Benson, Arizona.

- d. The Congregation List shall be updated, by reasonable efforts of the Clerk in November of each calendar year.
- e. 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 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 Clerk at the bottom of the page, and read as follows:

Dear religious leader,

The Benson City Council makes it a policy to invite members of the clergy in Benson to voluntarily offer a prayer 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 Benson City 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 meeting 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 prayer 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 Benson City Council, I thank you in advance for considering this invitation.

Sincerely,

Clerk to the Benson City Council

- g. As the invitation letter indicates, the respondents to the invitation shall be scheduled on a first-come, first-serve basis to deliver the prayers.
- 4. No invocation speaker shall receive compensation for his or her service.
 - 5. 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 a prayer at consecutive meetings of the Council, or more than three (3) Council meetings in any calendar year.

6. Neither the Council nor the Clerk shall engage in any prior inquiry, review of, or involvement in, the content of any prayer to be offered by an invocation speaker.
7. Shortly before the start of regular Council business, the Chairperson of the Council shall introduce the invocation speaker.
8. 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 or against, 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 Benson, Arizona.
9. To clarify the Council's intentions, as stated herein above, the following disclaimer shall be included in at least 10 point font at the bottom of any printed Council meeting agenda: "Any invocation that may be offered before the start of regular Council business shall be the voluntary offering of a private citizen, for the benefit of the Council and the citizens present. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the Council, and the Council does not endorse the religious beliefs or views of this, or any other speaker."
10. In the event that an eligible member of the clergy of the City of Benson is unavailable to perform the invocation, the invocation shall be voluntarily delivered by a single Councilmember, scheduled on a rotating basis among all Councilmembers who voluntarily choose to participate in the rotational list. The designated Councilmember shall deliver the prayer, invocation or moment of silence in his or her capacity as a private citizen, and according to the dictates of his or her own conscience. The Councilmember shall otherwise comply with the policies described herein to the extent that they do not conflict with this provision.

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

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BENSON, ARIZONA, this 12th day of January, 2009.



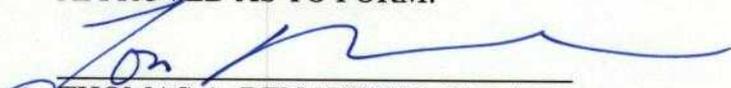
MARK M. FENN, Mayor

ATTEST:



VICKI L. VIVIAN, City Clerk

APPROVED AS TO FORM:



THOMAS A. BENAVIDEZ, City Attorney