

**RESOLUTION ADOPTING POLICY REGARDING OPENING INVOCATIONS
BEFORE MEETINGS OF THE MEMPHIS CITY COUNCIL**

WHEREAS, the Memphis City Council (“the Council”) is an elected legislative and deliberative public body, serving the citizens of Memphis, Tennessee; 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, the Founders of this country recognized that American citizens 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 adopt a policy consistent with 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 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, this council is not establishing a policy that defines the Constitutional limits for permissible public invocations but instead desires 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 United States Court of Appeals for the Sixth Circuit but is also guided by decisions in several federal circuits to help ensure that the Council’s 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), *cert. denied*; *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), the United States Court of Appeals for the Eleventh Circuit 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 clergy 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, consistent with its prior practice 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’Conner 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 Tennessee Constitutions and statutes.

NOW, THEREFORE, BE IT RESOLVED by the Memphis City Council 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 Memphis City Council. 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 an organization from the Council's Assemblies List . 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 Council Administrator of the Council shall cause a database to be compiled and maintained (the "Assemblies List") of the assemblies and organizations with an established presence in Memphis and Shelby County that regularly meet for the primary purpose of sharing a religious perspective or exist for the betterment of the City and its inhabitants (hereinafter referred to as benevolent organizations).

b. The Assemblies List shall be compiled from all available sources including the listing for "churches," "congregations," other religious assemblies or non- religious/ non-profit organizations that are devoted to the betterment of the City and its inhabitants in databases maintained by the Council, suggestions from council members, the annual phonebook distributed by ATT, research from the Internet, and consultation with local neighborhood associations. All benevolent organizations with an established presence in the area are eligible to be included in the Assemblies List, and any such organization may request inclusion in the Assemblies List by written request to the Chairman of the Council.

c. The policy is intended to be and shall be applied in a way that is all-inclusive of every diverse religious assembly and benevolent organizations serving the citizens of Memphis and Shelby County, irrespective of religious or irreligious affiliation. The Assembly List is compiled and used for purposes of logistics, efficiency, and equal opportunity for all of the community's benevolent organizations, who may themselves choose whether to respond to the Council's invitation and participate. Should a question arise as to the authenticity of a benevolent organization, the Council Administrator 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, law enforcement agencies or military organizations within the City and County.

e. The Assemblies List shall be updated, by reasonable efforts of the Council Administrator, by December 15 of each calendar year.

- g. Within thirty (30) days of the effective date of this policy, and on or about December 31 of each calendar year thereafter, the Council Administrator shall publish a notice in a newspaper of general circulation in Memphis and Shelby County and shall post a notice on the bulletin board outside the Council's chambers which shall read:

MEMPHIS CITY COUNCIL'S INVOCATION POLICY

The Memphis City Council makes it a policy to invite members of the clergy, religious representatives and representatives of other benevolent organizations in Memphis and Shelby County to voluntarily offer an invocation before the beginning of its meetings, for the benefit, blessing, wisdom and guidance of the Council. Any leader of a religious congregations or representative of a benevolent organization with an established presence in the local community, any chaplain for one of the local fire departments, law enforcement agencies or military units, are eligible to offer this important service at an upcoming meeting of the Council.

Any organization or individual willing to assist the Council in this regard, please send a written request at your earliest convenience to the Council Administrator of the Council at City Hall, Room 514. Persons delivering the invocation are scheduled on a first-come, first-serve basis. The dates of the Council's scheduled meetings for the upcoming year are established by ordinance before the beginning of each calendar year and are listed on the council's website. If you have a preference among the dates, please state that request in your written request.

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.

MEMPHIS CITY COUNCIL
CHAIRMAN

- i. As the invitation notice 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 Council Administrator 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. Should there be no requests or not enough sufficient requests to give the invocation at any of the twenty-four (24) bi-monthly meetings of the Council, the Council Administrator shall cause persons to be invited on a random basis.

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 Council Administrator of the Memphis City Council. "

10. Shortly after 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 in Memphis and Shelby County. This policy shall in no way govern the statements or comments authorized by the Council's Rules of Procedure for any member of the general public at the end of the Council meetings; this segment of the Council's agenda is intended to afford

any member of the general public to make any statements protected by the First Amendment of the United States Constitution.

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

JIM STRICKLAND,
Council Member

BILL MORRISON
CHAIRMAN