

RESOLUTION 2020-27

A RESOLUTION OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, ADOPTING A POLICY REGARDING INVOCATIONS AT MEETINGS OF THE CITY COMMISSION OF THE CITY OF LAKE WALES; PROVIDING AN EFFECTIVE DATE

WHEREAS, the City Commission is an elected legislative and deliberative public body, serving the citizens of the City of Lake Wales; 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 City Commission; and

WHEREAS, since the incorporation of the City, the City Commission has followed a practice of selecting a member of local clergy to provide invocations at City Commission meetings; and

WHEREAS, the City Commission now desires to adopt this formal, written policy to clarify and codify 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 acknowledgment 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 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, the City Commission intends, and has intended in past practice, to adopt a policy that upholds an individuals “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 United States Court of Appeals for the Eleventh Circuit in *Atheists of Florida, Inc., v. City of Lakeland, Florida*, 713 F.3d 577(2013), has approved of the utilization of a list of local clergy who may be called upon on a rotating basis to deliver an invocation; and

WHEREAS, the Supreme Court has determined that “So long as the town maintains a policy of nondiscrimination, the Constitution does not require it to search beyond its borders for non-Christian prayer givers in an effort to achieve religious balancing.” *Town of Greece, New York v. Galloway*, 572 U.S. 565, 585-586 (2014); and

WHEREAS, the City Commission 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, for a period in excess of 11 years, the Invocation offered prior to the Lake Wales City Commission meetings has been given by the Rev. Dr. James Moyer, who is the appointed Chaplain for the Polk County Sheriff's Department, and who voluntarily provides his services to the City; and

WHEREAS, Dr. Moyer has offered to continue to serve in the capacity of Chaplain and will advise the City Clerk in the event that he is unable to attend a meeting in order that the Mayor be made aware that the Chaplain is unavailable to deliver the Invocation for the particular meeting; and

WHEREAS, in prior instances over the years of his service when Dr. Moyer has been unavailable, the Mayor has asked for a volunteer from the audience to deliver an invocation or has personally given the Invocation or has asked other members of the City Commission to offer the Invocation; and

WHEREAS, the City Commission 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 Commission of the City of Lake Wales, Florida, that the City Commission does hereby adopt the following written policy regarding opening invocations before meetings of the City Commission, to wit:

1. In order to solemnize proceedings of the City Commission, it is the policy of the City Commission to allow for an invocation or prayer to be offered at its meetings for the benefit of the City Commission and the community.
2. The invocation or prayer shall be given prior the meeting being formally called to order so that it may be clear that the prayer or invocation is not considered a part of the public business.
3. The Rev. Dr. James Moyer is hereby appointed as the City's official voluntary Chaplain.
4. No member of the City Commission or City employee or any other person in attendance at the meeting shall be required to participate in any prayer that is offered.
5. The prayer shall be voluntarily delivered by the City's Chaplain or by an eligible member of the clergy/religious leader in the local community of Lake Wales. To ensure that such person (the "invocational speaker") is selected from among a

wide pool of the local 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 area of the Lake Wales local community as identified in postal service Zip Codes 33853, 33859, and 33898.
- b. The Congregations List shall be compiled by referencing the listing for "churches," "congregations," or other religious assemblies in the local area of the City of Lake Wales by utilizing research from the Internet, input from local organizations such as the Lake Wales Care Center or consultation with the local chamber of commerce. All religious congregations with an established presence in the local community, as defined above, 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 Congregations List shall also include the name and contact information of any chaplain who may serve the City's fire department or police department. The Congregations List shall be updated, by reasonable efforts of the City Clerk, in November of each calendar year.
- d. Within thirty (30) days of the effective date of this policy, and on or about December 1 of each calendar year thereafter, 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.
- e. The invitation may be posted in any social media utilized by the City in order to further notify the local community of the Congregations List and its purpose.
- 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 Commission makes it a policy to invite members of the clergy in the Lake Wales local community to voluntarily offer a prayer before the beginning of its meetings for the benefit and blessing of the City Commission. As the leader of one of the religious congregations with an established presence in the local community of the City of Lake Wales, or in your capacity as a chaplain for the City's fire department or police department, you are eligible to offer this important service at a City Commission meeting when the City's appointed Chaplain is unavailable.

If you are willing to assist the City Commission 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 basis.

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 Commission requests only that the prayer opportunity not be exploited as an effort to convert others to the particular faith of the invocational speaker, nor to disparage any faith or belief different than that of the invocational speaker.

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

*Sincerely,
City Clerk*

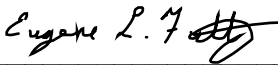
- g. Consistent with paragraph 5 hereof and, as the invitation letter indicates, the respondents to the invitation shall be scheduled on a first-come, first-serve basis to deliver the prayers when the Chaplain is unavailable.
 - h. If the selected invocational speaker does not appear at the scheduled meeting, the Mayor may ask for a volunteer from among the audience to deliver the invocation.
6. No invocational speaker shall receive compensation for his or her service.
 7. The City Clerk shall make every reasonable effort to ensure that an eligible invocational speaker is scheduled for the City Commission meeting when the Chaplain has advised that he is unavailable.
 8. Neither the City Commission nor the City Clerk shall engage in any prior inquiry, review of, or involvement in, the content of any prayer to be offered by the Chaplain or by an invocational speaker.
 9. Shortly before the opening gavel that officially begins the meeting and the agenda/business of the public, the Mayor shall introduce the Chaplain or invocational speaker. The recitation of the Pledge of Allegiance will follow the prayer. The Mayor will invite only those who wish to do so to stand for those observances with the City Commission..
 10. This policy is not intended, and shall not be implemented or construed in any way, to affiliate the City Commission with, nor express the City Commission's preference for, any faith or religious denomination. Rather, this policy is intended to acknowledge and express the City Commission's respect for the diversity of religious denominations and faiths represented and practiced among the citizens of the local community.

NOW, THEREFORE, BE IT FURTHER RESOLVED that this policy shall become effective immediately upon approval by the City Commission of the City of Lake Wales, Florida.

APPROVED AND ADOPTED this 9th day of September, 2020.

ATTEST:

Jennifer Nanek, CMC, City Clerk



Eugene Fultz, Mayor