



City Attorney's Communication #2015-1150
June 24, 2015


TO: Dennis W. Beach, City Manager
FROM: Gordon B. Linn, City Attorney
RE: Resolution – Invocations Before City Commission Meetings

Attached please find the following captioned Resolution addressing the above-referenced matter:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPAÑO BEACH, FLORIDA, ESTABLISHING A POLICY REGARDING INVOCATIONS BEFORE MEETINGS OF THE POMPAÑO BEACH CITY COMMISSION; MAKING FINDINGS; PROVIDING AN EFFECTIVE DATE.

Please place this matter on the July 14, 2015 City Commission Agenda. I have attached a Commission Agenda Cover Sheet for your convenience.

Should you have any questions regarding this matter, please feel free to contact me.


GORDON B. LINN

GBL/jrm
l:cor/manager/2015-1150

Attachments

RESOLUTION NO. 2015-_____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, ESTABLISHING A POLICY REGARDING INVOCATIONS BEFORE MEETINGS OF THE POMPANO BEACH CITY COMMISSION; MAKING FINDINGS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Pompano Beach (“the Commission”) is an elected legislative and deliberative public body serving the citizens of Pompano Beach, Florida); and

WHEREAS, the Commission wishes to maintain a tradition of solemnizing its proceedings by allowing for an opening invocation before each meeting for the benefit and blessing of the Commission; and

WHEREAS, the Commission now desires to adopt this formal, written policy to clarify 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 Commission, upon which we desire to invoke divine guidance and blessing; and

WHEREAS, such invocation 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 Commission 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 “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, in *Pelphrey, et al v. Cobb County, Georgia, et al*, 547 F.3d 1263 (11th Cir., Oct. 28, 2008), the United States Court of Appeals for the Eleventh Circuit, which includes Florida, held that the practice of allowing clergy to offer uncensored religious invocations at the beginning of sessions of a county commission and county planning commission did not violate

the Establishment Clause, as long as the invocations did not advance or disparage a belief or affiliate government with specific faith; and

WHEREAS, the U.S. Supreme Court has recently held in *Town of Greece v. Galloway, et al.*, 134 S.Ct. 1811 (2014) that so long as a town maintains a policy of nondiscrimination in legislative prayers, the Constitution does not require a town to search beyond its borders for non-Christian prayer givers in an effort to achieve religious balancing.

WHEREAS, the 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, the Commission 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 Commission accepts as binding the applicability of general principles of law and all the rights and obligations afforded under the United States and Florida Constitutions and statutes; now, therefore,

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. The foregoing findings are incorporated herein by reference and made a part hereof.

SECTION 2. In order to solemnize proceedings of the Commission, it is the policy of the Commission to allow for an invocation or prayer to be offered before its meetings for the benefit of the Commission.

SECTION 3. The invocation shall not be listed or recognized as an agenda item for the meeting or as part of the public business.

SECTION 4. No member or employee of the Commission or any other person in attendance at the meeting shall be required to participate in any invocation that is offered.

SECTION 5. The invocation shall be voluntarily delivered by an eligible member of the clergy, as specified below. To ensure that such person (the “invocation speaker”) is selected from among a wide pool of local clergy, on a rotating basis, the invocation speaker shall be selected according to the following procedure:

The City Clerk shall compile and maintain a database (the “Congregations List”) of the religious congregations with an established presence in the local community of Pompano Beach.

a. 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 Pompano Beach, research from the Internet, and consultation with local chambers of commerce. All religious congregations with an established presence in the local community of Pompano Beach are eligible to be, and shall be, included in the Congregations List.

b. This policy is intended to be and shall be applied in a way that is all-inclusive of every diverse religious congregation within Pompano Beach. The Congregations 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 Commission’s invitation and participate. Should a question arise as to the authenticity of a religious congregation, the City Clerk shall refer to criteria used by the Internal Revenue Service

in its determination of those religious organizations that would legitimately qualify for Section 501(c)(3) tax-exempt status.

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 Pompano Beach.

d. The Congregations List shall also include the name and contact information of any religious congregation located outside Pompano Beach, if such religious congregation is attended by a resident or residents of Pompano Beach, and such resident requests the inclusion of said religious congregation by specific written communication to the City Clerk.

e. The Congregations List shall be updated, by reasonable efforts of the City Clerk, on or about the month of November of each calendar year.

f. 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.

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

Dear Religious Leader,

The Pompano Beach City Commission makes it a policy to invite members of the clergy in Pompano Beach to voluntarily offer an invocation before the beginning of its meetings, for the benefit and blessing of the Commission. 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, or as the religious leader of one or more Pompano Beach residents, you are eligible to offer this important service at an upcoming meeting of the Commission.

If you are willing to assist the 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. The dates of the Commission'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 Commission requests only that the invocation 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 City Commission of City of Pompano Beach, I thank you in advance for considering this invitation.

Sincerely,

City Clerk

SECTION 6. As the invitation letter indicates, the respondents to the invitation shall be scheduled on a first-come, first-serve basis to deliver the invocations.

SECTION 7. No invocation speaker shall receive compensation for his or her service.

SECTION 8. The City Clerk shall make every reasonable effort to ensure that a variety of eligible invocation speakers are scheduled for the Commission meetings. In any event, no invocation speaker shall be scheduled to offer an invocation at consecutive meetings of the Commission, or at more than three (3) Commission meetings in any calendar year.

SECTION 9. Neither the Commission nor the City Clerk shall engage in any prior inquiry, review of, or involvement in, the content of any invocation to be offered by an invocation speaker.

SECTION 10. Shortly before the opening gavel that officially begins the meeting and the agenda/business of the public, the Mayor 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 do so to stand for those observances of and for the Commission.

SECTION 11. This policy is not intended, and shall not be implemented or construed in any way, to affiliate the Commission with, nor express the Commission's preference for or against, any faith or religious denomination. Rather, this policy is intended to acknowledge and express the Commission's respect for the diversity of religious denominations and faiths represented and practiced among the citizens of Pompano Beach.

SECTION 12. To clarify the Commission's intentions, as stated herein above, the following disclaimer shall be included in at least 10 point font at the bottom of any printed Commission meeting agenda: "Any invocation that may be offered before the official start of the Commission meeting shall be the voluntary offering of a private citizen, to and for the benefit of the Commission. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the Commission, and the Commission is not allowed by law to endorse the religious beliefs or views of this, or any other speaker."

SECTION 13. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2015.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

/jrm
6/24/15
L:reso/2015-399

RESOLUTION NO. 1821.

A RESOLUTION DECLARING IT TO BE THE POLICY
OF THE CITY COMMISSION TO HAVE A CLERGYMAN
OPEN THE MEETING.

WHEREAS, it is the felling of the City Commission
that their meetings should be opened by a clergyman, or in
his absence, by a prayer; and,

WHEREAS, this prayer is in keeping with the tenants
of dignity and faith of man in God; now therefore,

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY
OF POMPANO BEACH, FLORIDA:

SECTION 1: That the City Commission of the City of Pompano Beach,
Florida, does herein declare it to be a policy hereinafter of
the City Commission to open its ^{regular} meeting with a prayer by a
clergyman, or, in his absence, with the Lord's Prayer.

PASSED AND ADOPTED this 24th day of Nov, 1959.

J. T. Hill
Mayor

ATTEST:

Wm. F. Sharp
City Clerk