

## RESOLUTION 15-08

### A RESOLUTION OF THE CITY OF MARY ESTHER, FLORIDA RELATED TO CITY COUNCIL MEETINGS; CODIFYING ITS POLICY REGARDING INVOCATIONS BEFORE MEETINGS OF THE MARY ESTHER CITY COUNCIL; MAKING FINDINGS, IMPLEMENTING GUIDELINES, AND PROVIDING FOR AN EFFECTIVE DATE.

*WHEREAS*, the City Council of the City of Mary Esther, Florida ("the Council") is an elected legislative and deliberative public body, serving the citizens of Mary Esther, Florida; and

*WHEREAS*, the Council 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 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 Council, 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 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 793. 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 Father 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 acknowledge 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 (11<sup>th</sup> 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 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 Florida Constitutions and statutes.

*NOW, THEREFOR, BE IT RESOLVED* BY THE CITY COUNCIL OF THE CITY OF MARY ESTHER, 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 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.

**SECTION 3.** Although listed on the agenda as a placeholder, the invocation shall not be construed as an agenda item for the meeting or as part of the public business.

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

**SECTION 5.** As a matter of non-discrimination, the Council hereby adopts the following guidelines for the delivery of prayer or invocation at each of the City Council's meetings: The invocation or prayer shall be voluntarily delivered by any individual, clergy or laity, within the following guidelines at each city council meeting.

- a. The invocation or prayer shall be voluntarily delivered by any individual, clergy or laity desiring to do so.
- b. Prayers and invocations may be provided for at any meeting by chaplains, priests, ministers, pastors, rabbis, imams, bishops, elder, roshis, readers, deacons or any lay person.
- c. Such prayers or invocations shall be directed at the Council Members and not the public.
- d. Prayers and invocations shall not be used to convert or attempt to convert others towards a certain belief.
- e. Prayers and invocations shall not be used as an altar call or means of revival.
- f. Prayers and invocations shall be limited to one (1) minute or less.
- g. Prayers and invocations are to be spoken words and not accompanied by music, chanting, or any other non-verbal communications.
- h. Whenever possible, prayers and invocations should be directed as to provide wisdom and guidance to the Council, a blessing on the proceedings, and for the safety and security of our nation, community, military, first-responders, and citizenry.
- i. Anyone wishing to provide a prayer or invocation or lead the observance of a moment of silence shall contact the City Clerk to be scheduled for an available meeting date on a first-come, first-served basis.
- j. The City Clerk shall maintain a calendar of meeting dates and scheduled individuals.

k. In the absence of a member of the public having been scheduled for a meeting, an invocation, prayer or moment of silence may be offered by the Mayor or a member of the City Council.

**SECTION 6.** No invocation speaker shall receive compensation for his or her service.

**SECTION 7.** The City Clerk shall make every reasonable effort to ensure anyone wishing to provide an invocation or prayer is given the opportunity to do so without any one person or organization monopolizing the calendar. In the event of repeated requests by the same individual or organizational representative, no more than two consecutive meeting dates will be scheduled without a one month break in between to allow for others to participate.

**SECTION 8.** Neither the City Council nor the City Clerk shall engage in any prior inquiry, review of, or involvement in, the content of any invocation to be offered.

**SECTION 9.** 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 invite only those who wish to do so to stand for observances of and for the Council.

**SECTION 10.** 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 practice among the citizens of Mary Esther and Okaloosa County.

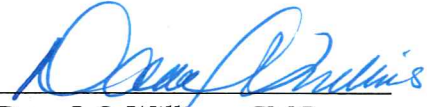
**SECTION 11.** To clarify the Council's intentions, as stated herein above, the following disclaimer shall be included in at the bottom of any printed Council meeting agenda: "Any invocation that may be offered before the official start of the Council meeting shall be the voluntary offering of a private 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 the Council is not allowed by law to endorse the religious beliefs or views of this or any other speaker."

SO DONE this 2<sup>ND</sup> day of NOVEMBER 2015.

By:

  
Margaret McLemore, Mayor

ATTEST:

  
Dana L.S. William, CMC  
City Clerk