

City of Palm Coast, Florida Agenda Item

Agenda Date: April 4, 2023

Department	CITY ADMINISTRATION	Amount
Division	CITY CLERK	Account #
Subject	RESOLUTION 2023-XX APPROVING THE CITY COUNCIL MEETING INVOCATION POLICY	
Presenter: Neysa Borkert, City Attorney		
Background: <u>UPDATE FROM THE MARCH 14, 2023, WORKSHOP:</u> During the City Council Workshop Meeting held on March 14, 2023, City Council held a lengthy discussion on this item. Changes have been made to the Invocation Policy and Resolution, and both are attached to this item. <u>ORIGINAL BACKGROUND FROM THE MARCH 14, 2023, WORKSHOP:</u> On January 31, 2023, City Council held a Special Workshop to review Council's Policies and Procedures. City Council requested the City Attorney provide a draft of an Invocation Policy for Council Meetings. This item is for Council consideration of the draft Invocation Policy, as provided by the City Attorney.		
Recommended Action: ADOPT RESOLUTION 2022-XX APPROVING THE CITY COUNCIL MEETING INVOCATION POLICY		

RESOLUTION 2023-____
CITY COUNCIL MEETING INVOCATION POLICY

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, ADOPTING THE CITY OF PALM COAST MEETING INVOCATION POLICY; AUTHORIZING THE CITY MANAGER TO TAKE CERTAIN ACTIONS TO IMPLEMENT THE POLICY; PROVIDING FOR SEVERABILITY, PROVIDING FOR CONFLICTS, PROVIDING FOR IMPLEMENTING ACTIONS, AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Palm Coast (“City”) City Council is an elected legislative and deliberative public body, serving the citizens of the City of Palm Coast; and

WHEREAS, the City Council desires to adopt a policy to solemnize its proceedings by establishing a procedure to allow for an invocation to be delivered at the beginning of its meetings; 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 session 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, a policy establishing invocations to begin the meetings of a governing body is permissible if the policy prohibits proselytizing, does not dictate what religion the speaker belongs to and does not direct the content of the invocation, see *Town of Greece v. Galloway*, 134 S.Ct. 1811 (2014); and

WHEREAS, the City 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. *Marsh* at 792; and

WHEREAS, numerous courts have approved an invocation practice that incorporates a neutral system to invite religious leaders from the local community and volunteers to provide an invocation before public meetings, see *Town of Greece*; see also *Simpson v. Chesterfield Cnty. Bd. of Supervisors*, 404 F.3d 276 (4th Cir. 2005), cert denied,

546 U.S. 937 (2005); *Pelphrey v. Cobb Cnty.*, 547 F.3d 1263 (11th Cir. 2008); *Rubin v. City of Lancaster*, 710 F.3d 1087 (9th Cir. 2013); and

WHEREAS, case law has established that for First Amendment purposes, “religion” includes non-Christian faiths and those that do not profess belief in the Judeo–Christian God, which includes the lack of any faith. *Glassroth v. Moore*, 335 F.3d 1282 (11th Cir. 2003); see also *Wallace v. Jaffree*, 472 U.S. 38, 52–53, 105 S.Ct. 2479, 2487–88, 86 L.Ed.2d 29 (1985) (“[T]he Court has unambiguously concluded that the individual freedom of conscience protected by the First Amendment embraces the right to select any religious faith or none at all.”); and

WHEREAS, the City Council intends to adopt a policy that does not proselytize or advance any particular faith, or show any purposeful preference for one religious view to the exclusion of others; and

WHEREAS, the selection process for an invocation speaker does not violate the Establishment Clause if it does not advance or disparage any particular faith, see *Atheists of Florida, Inc. v. City of Lakeland, Fla.*, 713 F.3d 577 (11th Cir. 2013); *Williamson v. Brevard County*, 928 F.3d 1296 (11th Cir. 2019) (“the Commissioners may not categorically exclude from consideration speakers from a religion simply because they do not like the nature of its beliefs”.) and

WHEREAS, the City Commission provides all of its citizens, regardless of their religious beliefs, the free and equal benefits of citizenship, invites all leaders of all religious assemblies to volunteer to give a public meeting invocation, does not discriminate against anyone on the basis of their participation or non-participation in a public meeting invocation, encourages all invocation speakers to be respectful of those who may hold different religious beliefs, and prohibits invocations that intentionally proselytize or disparage any person, religion, or religious sect; and

WHEREAS, the City 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 City Council, and to accomplish the City 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 v. Donnelly*, 465 U.S. 668, 693 (1984); and

WHEREAS, the City Council accepts as binding the applicability of general principles of law and all the rights and obligations afforded under the United States and the State of Florida Constitution and statutes; and

WHEREAS, the City Council finds it in the best interests of the City and its citizens to adopt by resolution the City of Palm Coast Meeting Invocation Policy attached hereto as Exhibit A for immediate use and application.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY OF PALM COAST, FLORIDA:

SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS. The above recitals (whereas clauses) are hereby adopted as the findings of the City Council of the City of Palm Coast. This policy and these procedures are not intended, and shall not be implemented, and shall not be construed in any way, to affiliate the with, nor express a preference for or against, any faith, belief, non-belief, opinion, religion, non-religion, or denomination. Rather, this Policy is intended to acknowledge and express the City Council’s respect for the diversity of religious and non-religious denominations and faiths represented and practiced among the citizens of the City and to express the City Commission’s respect for its proceedings and the importance of government and local legislative functions. In no event shall these procedures be intended, implemented, or construed in any way to compel participation in the opening invocation or recitation of the Pledge of Allegiance. Neither the City Commission nor the City staff shall single out dissidents for opprobrium; or indicate in any manner the City Commission’s decisions to be influenced by a person’s participation or lack of participation in the opening invocation or recitation of the Pledge of Allegiance.

SECTION 2. ADOPTION OF POLICY. The City of Palm Coast Meeting Invocation Policy attached hereto as Exhibit A (“Policy”), is hereby adopted pursuant to this Resolution for all City Council meetings. This Policy shall remain in full force and effect until such time as the City Council may amend the same.

SECTION 3. POLICY IMPLEMENTATION. The City Manager is hereby directed to take all actions necessary to implement the Policy.

SECTION 4. SEVERABILITY. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impart the validity, force or effect of any other section or part of the Resolution.

SECTION 5. CONFLICTS. All resolutions or parts of resolutions in conflict with this Resolution are hereby repealed.

SECTION 6. EFFECTIVE DATE. This Resolution shall become effective immediately upon its adoption by the City Council.

DULY PASSED AND ADOPTED by the City Council of the City of Palm Coast, Florida, on the 4th day of April 2023.

ATTEST:

CITY OF PALM COAST

VIRGINIA A. SMITH, CITY CLERK

DAVID ALFIN, MAYOR

APPROVED AS TO FORM AND LEGALITY:

NEYSA BORKERT, CITY ATTORNEY

Attachment: Exhibit A - City of Palm Coast Meeting Invocation Policy

CITY OF PALM COAST MEETING INVOCATION POLICY

The City of Palm Coast adopts the following Meeting Invocation Policy (“Policy”) for the purpose of providing a process to allow invocation speakers to give a short invocation at the beginning of City Council meetings. The City Council has determined that invocations which comply with the guidelines in this Policy are consistent with applicable law and jurisprudence.

Absent a pattern of invocations that over time denigrate, proselytize, or betray an impermissible government purpose, a policy establishing invocations to begin the meetings of a governing body is permissible. *Town of Greece v. Galloway*, 134 S.Ct. 1811 (2014); see *Marsh v. Chambers*, 463 U.S. 783 (1983) (the practice of opening a legislative session with prayer is deeply rooted in history and does not violate the Establishment Clause); *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022) (activities which accord with history and tradition are permissible under the Establishment Clause); *Atheists of Florida, Inc. v. City of Lakeland*, 713 F.3d 577 (11th Cir. 2013) (the selection process for an invocation speaker does not violate the Establishment Clause if it does not advance or disparage any particular faith). Further, the selection process for an invocation speaker does not violate the First Amendment if it does not advance or disparage any particular faith. *Atheists of Florida, Inc. v. City of Lakeland, Fla.*, 713 F.3d 577 (11th Cir. 2013); *Williamson v. Brevard County*, 928 F.3d 1296 (11th Cir. 2019) (commissioners may not categorically exclude from consideration speakers from a religion simply because they do not like the nature of its beliefs).

POLICIES

1. To solemnize proceedings of the Palm Coast City Council, it is the Council’s policy to allow for a brief invocation to be offered at its regular business meetings for the benefit of the City Council and the residents of Palm Coast. Invocations given must comply with the following:
 - a. The invocation, which may include prayer; a reflective moment of silence; or a short solemnizing message, is to be offered before its regularly scheduled business and workshop meetings for the benefit of the City Council, to accommodate the spiritual needs of the public officials. Special meetings, emergency meetings, and workshops will not include an opening invocation. The invocation shall not exceed one (1) minute in length.
 - b. The invocation shall occur after the “Pledge of Allegiance” item on the meeting’s Agenda.
 - c. Only one (1) invocation shall be given per meeting.
 - d. The invocation may be secular or nonsecular in nature. Invocations may not be used to advance or disparage any particular religion, faith, or belief. Invocations should be considerate of all Palm Coast residents and must display a respectful attitude

towards all peoples regardless of religion, race, national origin, sex, gender, or ability.

2. No member of the City Council nor any other person in attendance at the meeting shall be required to participate in any invocation that is offered. No person in attendance will be directed to stand, bow, or in any way participate in the prayers; make public note of a person's presence or absence, attention or inattention during the invocation; or indicate that decisions of the City Council will in any way be influenced by a person's acquiescence in the prayer opportunity. The Mayor will provide time for persons who wish to leave the room during an invocation to do so, and equal time for them to return to the room before other business is addressed.
3. The invocation shall be voluntarily delivered by a local clergy-member, religious leader, or community religious leader. To ensure such person ("Invocation Speaker") is selected from among a wide pool possible speakers, on a rotating basis, the Invocation Speaker shall be selected according to the following procedure:
 - a. The City shall post on its website an invitation to deliver the invocation which shall substantially read as follows:

The City of Palm Coast makes it a policy to invite members of the local community to offer an invocation before the beginning of its regular business and workshop meetings. The City Council extends its invitation for a representative from your assembly to deliver the invocation at one of our regular business meetings, which are typically held on Tuesdays in the City Council Chambers, located at 160 Lake Ave., Palm Coast, FL 32164.

It is the City's policy that an invocation speaker is free to offer an invocation according to the dictates of their own conscience, but, in order to comply with applicable law, the public invocation opportunity may not be exploited to proselytize or advance any one, or to disparage any other faith or belief. Each speaker who requests to deliver an invocation at an upcoming meeting of the City Council shall be scheduled to deliver the invocation on a first-come, first-serve basis.

If you are willing to assist the City in this regard, please send a written reply via email to the City Clerk at vsmith@palmcoastgov.com or via mail to City of Palm Coast, c/o City Clerk, 160 Lake Ave., Palm Coast, FL 32164. Replies should include the name of the invocation speaker, the speaker's phone number, email address, the name of the associated congregation/assembly and its physical address.

The City Council's regular business and workshop meeting dates are posted on the City's website at <https://www.palmcoastgov.com>.

On behalf of the City, thank you for considering this invitation.

NOTE: all information provided is subject to disclosure pursuant to Florida's Public Record laws.

~~b. In addition to posting the above invitation on the City website, the City Clerk shall send an invitation once per year to all local congregations informing them of the invitation and this Policy.~~

~~e.b.~~ The City shall maintain a database of the religious congregations, of all denominations, located within the City of Palm Coast that have expressed an interest in delivering an invocation. All religious congregations and assemblies with an established presence in the City of Palm Coast are eligible to be included in the congregations list and any such congregation can confirm its inclusion by written request to the City Clerk. ~~Any congregation may confirm its inclusion in the congregations list by written request to the City Clerk.~~ Persons who reside within the City of Palm Coast and who are members of a religious congregation which is located within Flagler County, but outside of the jurisdictional boundaries of the City of Palm Coast may, in a writing or email addressed to the City Clerk, request the inclusion of their congregation on the congregation list. In maintaining the congregation list and in enacting a procedure to include congregations which are frequented by the City's residents but which are outside of the City's boundaries, the City intends to ensure that all of the community's religious denominations have an equal opportunity to provide Invocation Speakers.

~~d.c.~~ The City Clerk shall make a reasonable effort to update the congregations list annually, or as changes are received.

4. Consistent with the above, Invocation Speakers shall be selected on a first-come, first-serve basis. Should this method of selecting a speaker be impracticable at any point, speakers shall be chosen randomly.
5. If the selected Invocation Speaker does not appear at the scheduled meeting, the City Council ~~may elect to~~will supplement with a moment of silence.
6. The Invocation Speaker may not act as an extension of their denomination or faith group. The invocation is not an opportunity to preach, proselytize, or otherwise advance any particular religion or belief.
7. The invocation may not advance any particular political or social movement in a manner that would suggest the City's involvement in such a movement.
8. No Invocation Speaker shall receive compensation of any kind for their service. The role of Invocation Speaker shall be voluntary.

9. The City shall make reasonable effort to ensure that a variety of eligible Invocation Speakers are scheduled for City Council meetings. If other eligible speakers are waiting and have not had an opportunity to deliver an Invocation, no speaker shall be scheduled to offer an invocation at more than two (2) City Council meetings in any calendar year.
10. The City shall not engage in any prior inquiry, review of, or involvement in the content of any invocation to be offered by an Invocation Speaker.
11. This Policy is not intended, and shall not be implemented or constructed in any way, to affiliate the City with, nor express the City's preference for, any faith or denomination. This Policy is intended to acknowledge and express the City's respect for the diversity of religious denominations and faiths represented and practiced among the citizens of Palm Coast.