

RESOLUTION NO. 2014-06

A RESOLUTION OF THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY, FLORIDA RELATING TO CITY COUNCIL MEETINGS AND PROVIDING FOR A POLICY REGARDING PRAYER AS A CEREMONIAL MATTER BEFORE BUSINESS OCCURRING AT MEETINGS OF THE CITY OF DAYTONA BEACH SHORES CITY COUNCIL; PROVIDING FOR APPOINTMENT OF A CHAPLAIN; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Daytona Beach Shores is an elected legislative and deliberative public body, serving the citizens of Daytona Beach Shores, Florida; and

WHEREAS, the City Council wishes to establish and maintain a tradition of solemnizing its proceedings by allowing for an opening prayer at each City Council meeting, for the benefit and blessing of the City Council and the citizens of the City of Daytona Beach Shores and in order to celebrate community spirit and focus the corporate mind of the City Council and others on the importance of liberty and harmony within the Daytona Beach Shores community under a government of laws; and

WHEREAS, the City Council now desires to adopt this formal, written policy to clarify and codify its practices relating to prayer; 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; and

WHEREAS, these rights ultimately ensure the self-government manifested in our City Council upon which we desire to invoke guidance and blessing during its deliberations and as a ceremony of, and plea for, a harmonious and productive spirit within the Daytona Beach Shores community; and

WHEREAS, prayer before deliberative public bodies has been consistently upheld as constitutional by American courts, including the United States Supreme Court; and

WHEREAS, in 1789 President George Washington issued a proclamation in which he stated “it is the duty of all Nations to acknowledge the providence of Almighty God, to obey his will, to be grateful for his benefits, and humbly to implore his protection and favor”; and

WHEREAS, in 1863 President Abraham Lincoln issued a proclamation in which he gave thanks for the “bounties, which are so constantly enjoyed that we are prone to forget the source from which they come, others have been added, which are of so extraordinary a nature, that they cannot fail to penetrate and soften even the heart which is habitually insensible to the ever watchful providence of Almighty God. In the midst of a civil war of unequalled magnitude and severity, which has sometimes seemed to foreign States to invite and to provoke their aggression, peace has been preserved with all nations, order has been maintained, the laws have been respected and obeyed, and harmony has prevailed everywhere except in the theatre of military conflict”; and

WHEREAS, there have been close to 150 national calls to prayer, humiliation, fasting and thanksgiving by the President of the United States between 1789 and 2010, there have been 58 Presidential Proclamations for a “National Day of Prayer” between 1952 and 2010, and every President since 1952 has signed a National Day of Prayer proclamation; 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 that, “[t]he 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 City 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 792, and 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), that “[o]ur 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, Justice, concurring); and

WHEREAS, the Supreme Court also famously observed in *Zorach v. Clauson*, 343 U.S. 306, (1952), that “[w]e 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, “[t]he 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 within its jurisdictional limits, 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, most recently, on May 5, 2014 the United States Supreme Court ruled in the case of *Town of Greece v. Galloway* (Docket Number 12-696), and the Court held that the Town's practice of opening its town board meetings with a prayer offered by members of the clergy does not violate the Establishment Clause when the practice is consistent with the tradition long followed by Congress and state legislatures, the town does not discriminate against

minority faiths in determining who may offer a prayer, and the prayer does not coerce participation with non-adherents; and

WHEREAS, Article I, Section 3 of the *Constitution of the State of Florida* relates to religious freedom and provides that “[t]here shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.”; and

WHEREAS, the City Council hereby intends 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, but, in the context of offering prayer within the ceremonial part of meeting, that praises our Providence and Creator; seeks guidance and blessing upon the community of Daytona Beach Shores; and urges protection upon our citizens and our soldiers, marines, sailors and members of the Air Force and Coast Guard who are in danger while serving our Nation and protecting our freedoms and liberties; and

WHEREAS, the City 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 City 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, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA:

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

SECTION 2. POLICY OF THE CITY COUNCIL. In order to solemnize proceedings of the City Council, it is the policy of the City Council to allow for prayer to be offered before its meetings during ceremonial matters for the benefit of the City Council and those who, in the exercise of their own beliefs and consciences, desire to engage in such ceremonial activity.

SECTION 3. PRAYER AS AGENDA ITEM. The matter of prayer shall be listed as part of the ceremonial items on City Council agendas, as provided in this Resolution, and shall not be listed or recognized as an agenda item for the meeting or as part of the public business to be transacted at a meeting.

SECTION 4. VOLUNTARY PRAYER. No member or employee of the City Council or any other person in attendance at the meeting shall be required to participate in any prayer that is offered and the participation or non-participation in such activities shall not have any significance relative to any business matter to be brought before the City Council.

SECTION 5. PRAYER BY CLERGY.

(a). The Reverend Robert Kemp-Baird is hereby appointed to serve in the capacity of City Council Chaplain and the City Council Chaplain shall provide prayer during the ceremonial matters part of the City Council agenda. Future appointments shall occur in a manner such as has been accomplished by the adoption of this Resolution.

(b). In the absence of the City Council Chaplain, the Mayor may ask a member of the City Council or City staff to provide the prayer. The Mayor, using absolute discretion, may do likewise as to special meetings of the City Council.

(c). The policies set forth in this Resolution are intended to be and shall be applied in a way that is all-inclusive of every diverse religious congregation within the Daytona Beach Shores community.

SECTION 6. RESPECT OF DIVERSE FAITHS. This Resolution is not intended, and shall not be implemented or construed in any way, to affiliate the City Council with, nor express the City Council's preference for or against, any faith or religious denomination. Rather, this policy is intended to acknowledge and express the City Council's respect for the diversity of religious denominations and faiths represented and practiced among the citizens of Daytona Beach Shores and its environs.

SECTION 7. NO PAYMENT BY CITY. No speaker shall receive compensation for his or her service under the provisions of this Resolution.

SECTION 8. CONFLICTS. All resolutions or part of resolutions in conflict with this Resolution are hereby repealed.

SECTION 9. SEVERABILITY. If any section, sentence, phrase, word, or portion of this Resolution is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word, or portion of this Resolution not otherwise determined to be invalid, unlawful, or unconstitutional.

SECTION 10. EFFECTIVE DATE. This Resolution shall take effect immediately upon passage and adoption.

CITY OF DAYTONA BEACH SHORES, FLORIDA

By: _____
Mayor, Harry Jennings

ATTEST:

By: _____
Michael T. Booker, City Manager

Cheri Schwab, City Clerk

APPROVED AS TO FORM AND LEGALITY:

By: _____
Lonnie Groot, City Attorney

Passed and adopted on first reading this _____ day of, 2014.

Posted this _____ day of, 2014.