

**POLICY REGARDING OPENING INVOCATIONS  
BEFORE MEETINGS OF THE HAMILTON COUNTY COMMISSION**

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**WHEREAS**, the Hamilton County Commission (“the Commission”) is an elected legislative and deliberative public body, serving the citizens of Hamilton County, Tennessee; and

**WHEREAS**, the Commission has maintained 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’s prior tradition was never reduced to a formal, written policy; and

**WHEREAS**, recent court decisions have provided guidance for legislative and deliberative public bodies who desire to so accordingly solemnize their proceedings; and

**WHEREAS**, the Commission 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 deliberative bodies, upon which we desire to invoke divine guidance and blessing; and

**WHEREAS**, such invocations 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 validated 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.” *Marsh* 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. *Marsh* 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.” *Marsh* at 792; 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.” *Zorach* 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...,” *Holy Trinity Church* 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 is not 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. *Marsh* at 794-795; and

**WHEREAS**, this Commission is not establishing a policy that defines the Constitutional limits for permissible public invocations, this Commission intends to adopt guidelines that are consistent with the guidance provided by the several courts that have considered the validity of public invocations; and

**WHEREAS**, this Commission is only bound by the decisions of United States Supreme Court and the Court of Appeals for the Sixth Circuit, the United States Court of Appeals in several federal circuits have provided general guidance to help ensure that policies concerning public invocations are consistent with the Constitution; and

**WHEREAS**, in *Snyder v. Murray City Corporation*, 159 F.3d 1227 (10<sup>th</sup> Cir. 1998), the United States Court of Appeals for the Tenth Circuit provided guidance when it clarified that the Constitution is concerned with a “more aggressive form of advancement, i.e., proselytization,” and the term “proselytize” as used by the Supreme Court in *Marsh* indicates “the real danger in this area is effort by the government to convert citizens to particular sectarian views.” *Snyder*, at 1234 n.10; and

**WHEREAS**, numerous courts have approved an invocation practice that incorporates a neutral system to invite religious leaders from the local community to volunteer on a first come first served basis provide an invocation before public meetings. See *Simpson v. Chesterfield County Bd. of Supervisors*, 404 F.3d 276 (4<sup>th</sup> Cir. 2004), *cert. denied*; *Pelphrey v. Cobb County, Ga.*, 547 F.3d 1263 (11<sup>th</sup> Cir. 2008), *cert. denied*; *Joyner v. Forsyth County, NC*, 653 F.3d. 341 (4<sup>th</sup> Cir. 2011), *cert. denied*.

**WHEREAS**, the Fourth Circuit showed little concern that the invocations before board meetings in *Simpson* included prayers that were “traditionally made to a divinity that is consistent with the Judeo-Christian tradition,” *Simpson.*, at 280, because *Marsh* also considered,

and found constitutionally acceptable, the fact that the prayers in question fit broadly within ‘the Judeo-Christian tradition.’” *Simpson.*, at 283 (quoting *Marsh*, 463 U.S. at 793); and

**WHEREAS**, the Commission intends to avoid the unique circumstances identified by the Fourth Circuit’s decision in *Wynne v. Town of Great Falls*, 376 F.3d 292 (4<sup>th</sup> Cir. 2002), *cert. denied*, that found an invocation practice unconstitutional because a town Board “improperly ‘exploited’ a ‘prayer opportunity’ to ‘advance’ one religion over others.” *Id.*, at 298 (quoting *Marsh*, 463 U.S. at 794) because:

(1) The Town Council “steadfastly refused” to allow any “deity associated with any specific faith other than Christianity” to be invoked, *Wynne.*, at 300, n.5; and

(2) Town Council members publicly chided and “ostracized” those who refused to participate in their prayers, *Wynne.*, at 295; and

(3) The refusal to participate in prayers “adversely affected [a citizens] right to participate in the Council meetings.” *Wynne*, at 299, n.4; and

**WHEREAS**, in *Pelphrey v. Cobb County*, 547 F.3d 1263 (11<sup>th</sup> Cir. 2008), the United States Court of Appeals for the Eleventh Circuit reviewed and specifically approved as constitutional the invocation policy of a county board that did not “compose or censor prayers” by attempting to limit prayers to “nondenominational” or “nonsectarian” prayers but rather allowed clergy members to offer invocations consistent with the dictates of their own conscience. *Pelphrey*, at 1267-74; and

**WHEREAS**, the Commission intends, and has intended in past instances, to adopt a policy that does not proselytize or advance any particular faith, or show any purposeful preference of one religious view to the exclusion of others; and

**WHEREAS**, the Commission intends to adopt a policy that will not show a purposeful preference of one religious view over another by not permitting the faith of the person offering the invocation to be considered when extending an invitation; and

**WHEREAS**, the Supreme Court recognized in *Marsh v. Chambers*, 463 U.S. at 786, this country’s history and tradition of opening sessions of deliberative public bodies with an invocation and affirmed in *Lynch v. Donnelly*, 465 U.S. 668 (1984), that “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.” *Lynch.*, at 675, and the Commission 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 Commission, and to accomplish the Commission’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*, 465 U.S. at 693 (O’Conner concurring); 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 Tennessee Constitutions and statutes.

**NOW, THEREFORE, BE IT RESOLVED** by the Hamilton County Commission of Hamilton County, Tennessee, that the Commission hereby adopts the following written policy regarding opening invocations before meetings of the Commission, to wit:

1. This policy shall replace any prior practice of the Hamilton County Commission concerning opening invocations before the meetings of the Hamilton County Commission. Any and all such prior practices of the Hamilton County Commission are specifically repealed.
2. It is the intent of the Commission to allow a private citizen to solemnize the proceedings of the Hamilton County Commission. It is the policy of the Commission to allow for an invocation, which may include a prayer, a reflective moment of silence, or a short solemnizing message, to be offered before its meetings for the benefit of the Commission.
3. No member or employee of the Commission or any other person in attendance at the meeting shall be required to participate in any prayer that is offered.
4. The prayer shall be voluntarily delivered by an eligible member of the clergy in Hamilton County, Tennessee. To ensure that such person (the "invocation speaker") is selected from among a wide pool of the County's clergy, on a rotating basis, the invocation speaker shall be selected according to the following procedure:
  - a. The staff of the Hamilton County Commission (the "staff") shall compile and maintain a database (the "Congregations List") of the religious congregations with an established presence in Hamilton County.
  - b. The Congregations List shall be compiled by referencing the listing for "churches," "congregations," or other religious assemblies in Hamilton County. All religious congregations with an established presence in Hamilton County are eligible to be included in the Congregations List, and any such congregation can confirm its inclusion by specific written request to the staff.
  - c. The policy is intended to be and shall be applied in a way that is all-inclusive of every diverse religious congregation in Hamilton County. 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 staff shall refer to criteria used by the Internal Revenue Service in its determination of those religious organizations that would legitimately qualify for I.R.C. § 501(c)(3) tax-exempt status.

- d. 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 located within Hamilton County.
- e. The Congregations List shall also include the name and contact information of any religious congregation located outside Hamilton County if such religious congregation is attended by at least one resident of Hamilton County and such resident requests the inclusion of said religious congregation by specific written communication to the staff.
- f. The Congregations List shall be updated, by reasonable efforts of the staff, in November of each calendar year.
- g. Within thirty (30) days of the effective date of this policy, and on or about December 1 of each calendar year thereafter, the staff 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.
- h. The invitation shall be dated at the top of the page, signed by the Chairman at the bottom of the page, and read as follows:

1. *Dear religious leader,*
2. *The Hamilton County Commission makes it a policy to invite members of the clergy in Hamilton County 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, you are invited to provide this important service at an upcoming meeting of the Commission.*
3. *If you are willing to assist the Commission in this regard, please send a written reply at your earliest convenience to the staff to the Commission 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.*
4. *This opportunity is voluntary, and you are free to offer the invocation according to the dictates of your own*

*conscience. However, please try not to exceed no more than five (5) minutes for your presentation. To maintain a spirit of respect for all, the Commission requests only that the 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.*

5. *On behalf of the Hamilton County Commission I thank you in advance for considering this invitation.*

5. As the invitation letter indicates, the respondents to the invitation shall be scheduled on a first-come, first-serve basis to deliver the invocation. In the event an eligible member of the clergy believes that the staff has not complied with the terms of this policy, the clergy member has the right to have the matter reviewed by the Commission.
6. No invocation speaker shall receive compensation for his or her service.
7. No guidelines or limitations shall be issued regarding an invocation's content, except that the Commission shall request by the language of this policy that no invocation should proselytize or advance any faith, or disparage the religious faith or non-religious views of others, or exceed five (5) minutes in length.
8. The staff 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.
9. Neither the Commission nor the staff shall engage in any prior inquiry, review of, or involvement in, the content of any invocation to be offered by an invocation speaker.
10. To clarify the Commission's intentions, as stated herein above, the following disclaimer shall be included in at least ten (10) point font at the bottom of any printed program or schedule of events published by the Commission::

*“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 do not necessarily represent the religious beliefs or views of the Commission in part or as a whole. No member of the community is required to attend or participate in the invocation and such decision will have no impact on their right to actively participate in the business of the Commission.”*

11. The Chairperson of the Commission or any Commission member designated by the Chairperson 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 show respect for the traditional observances and/or the Commission to stand.

12. 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, 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 Hamilton County.
13. If any provision of this Resolution or the application thereof is held invalid, such invalidity shall not affect other provisions or application of this Resolution which can be given effect without the invalid provision or application, and to this end, the provisions of this Resolution are hereby declared severable.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that this policy shall become effective immediately upon adoption by the Commission.

THUS INTRODUCED at the regular meeting of the Hamilton County Commission on \_\_\_\_\_, 2012.

For: \_\_\_\_\_

Against: \_\_\_\_\_

THUS ADOPTED at the regular meeting of the Hamilton County Commission on \_\_\_\_\_, 2012.

\_\_\_\_\_  
CLERK

\_\_\_\_\_  
CHAIR of COMMISSION