

RESOLUTION NO. R16-123

A RESOLUTION BY TROTWOOD CITY COUNCIL ADOPTING POLICY REGARDING OPENING INVOCATIONS BEFORE MEETINGS OF THE TROTWOOD CITY COUNCIL.

WHEREAS, the City Council of Trotwood is an elected legislative and deliberative public body, serving the citizens of Trotwood, Ohio; and

WHEREAS, Council wishes to solemnize its proceedings by allowing for an opening invocation before a meeting, for the benefit and blessing of Council; and

WHEREAS, 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 that self-government manifest in our deliberative bodies, upon which we desire to invoke divine guidance and blessing; 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." *Id.* at 786; and

WHEREAS, in *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014), the United States Supreme Court validated opening prayers at meetings of the Town Board of Greece, New York finding that "legislative prayer lends gravity to public business, reminds lawmakers to transcend petty differences in pursuit of a higher purpose, and expresses a common aspiration to a just and peaceful society." *Id.* at 1818; and

WHEREAS, 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 1816; and

WHEREAS, the Supreme Court has clarified that opening invocations are "meant to lend gravity to the occasion and reflect values long part of the Nation's heritage" and should not show over time "that the invocations denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion." *Id.* at 1823; and

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

WHEREAS, numerous courts have approved an invocation practice that incorporates a neutral system to invite religious leaders from the local community and/or volunteers to provide an invocation before public meetings. *Id.*; *see also Simpson v. Chesterfield Cnty. Bd. of Supervisors*, 404 F.3d 276 (4th Circ.2005), *cert. denied*, 546 U.S. 937 (2005); *Pelphrey v. Cobb Cnty.*, 547 F.3d 1263 (11th Circ.2008); *Rubin v. City of Lancaster*, 710 F.3d 1087 (9th Circ.2013); and

WHEREAS, Council intends 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, Council 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 or scheduling participation; and

WHEREAS, 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 Council, and to accomplish 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) (O'Connor, J., concurring); and

WHEREAS, Council accepts as binding the applicability of general principles of law and all the rights and obligations afforded under the United States and Ohio State Constitutions and statutes.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROTWOOD, STATE OF OHIO, THAT:

SECTION I: Council hereby adopts the following written policy regarding opening invocations before meetings of Council:

1. It is the intent of Council to allow a private citizen to solemnize the proceedings of Council. It is the policy of Council 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 Council to accommodate the spiritual needs of the public officials.

2. No member or employee of Council or any other person in attendance at the meeting shall be required to participate in any prayer that is offered and such decision shall have no impact on the ability of the person to actively participate in the business of Council.

3. No member or employee of Council will direct the public 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 Council will in any way be influenced by a person's acquiescence in the prayer opportunity.

4. The invocation shall be voluntarily delivered by an appointed representative of an Assembly located in the City of Trotwood. To ensure that such person (the "invocation speaker") is selected from among a wide pool of representatives, on a rotating basis, the invocation speaker shall be selected according to the following procedure:

- a. The Assembly must have an established presence in the City of Trotwood that regularly meets for the primary purpose of sharing a religious perspective (hereinafter referred to as a religious assembly).
- b. All religious assemblies with an established presence in the City of Trotwood are eligible to provide the invocation.
- c. The policy is intended to be and shall be applied in a way that is all-inclusive of every diverse religious assembly serving the citizens of the City of Trotwood. Should a question arise as to the authenticity of a religious assembly, the Clerk shall refer to criteria used by the Internal Revenue Service in its determination of those organizations that would legitimately qualify for I.R.C. § 501(c)(3) tax-exempt status.
- d. Within thirty (30) days of the effective date of this policy, and on or about December 1 of each calendar year, the Clerk shall post on the City's website an invitation addressed to the religious assemblies in the City of Trotwood.
- e. The invitation shall be dated at the top of the page, signed by the Clerk at the bottom of the page, and read as follows:

Dear Religious Assembly in the City of Trotwood,

Council of the City of Trotwood makes it a policy to invite members of the clergy or religious representatives in the City of Trotwood to voluntarily offer an invocation before the beginning of its meetings, for the benefit and blessing of Council. As a representative of one of the religious congregations with an established presence serving the local community, you are eligible to offer this important service at an upcoming meeting of Council.

If you are willing to assist Council in this regard, please send a written reply at your earliest convenience to the Clerk of Council at the address included in this posting. Representatives are scheduled on a first-come, first-serve basis. The anticipated dates of Council's scheduled meetings for the upcoming year are listed on the following, attached page. If you have a preference among the date, 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, Council requests only that the opportunity not be exploited as an effort to convert others to the particular faith of the invocation speaker or to disparage any faith or belief different than that of the invocation speaker.

On behalf of the Council for the City of Trotwood, I thank you in advance for considering this invocation.

*Sincerely,
Clerk of Council*

- f. The respondents to the invitation shall be scheduled on a first-come, first-serve basis to deliver the invocation.
 - g. In the event an eligible representative of an assembly serving the local community believes that the Clerk has not complied with the terms of this policy, the representative has the right to have the matter reviewed by Council.
5. No invocation speaker shall receive compensation for his or her service.
6. No guidelines or limitations shall be issued regarding an invocation's content, except that Council 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.
7. The Clerk shall make every reasonable effort to ensure that a variety of eligible invocation speakers are scheduled for Council's meetings.
8. Neither Council nor the Clerk shall engage in any prior inquiry, review of, or involvement in, the content of any invocation to be offered by an invocation speaker.
9. This policy is not intended, and shall not be implemented or construed in any way, to affiliate Council with, nor express Council's preference for, any faith or religious denomination. Rather, this policy is intended to acknowledge and express Council's respect for the diversity of religious denominations and faiths represented and practiced among the citizens of the City of Trotwood.

SECTION II: This Resolution shall take effect and be in full force from and after the date of its passage.

Passed this _____ day of _____ 2016.

ATTEST:

APPROVED:

SANDRA L. RIEGE FULLER, CMC
CLERK OF COUNCIL

MARY A. MCDONALD
MAYOR

BETTYE L. GALES
VICE-MAYOR

CERTIFICATE OF RECORDING OFFICER

I, _____, Clerk of the City of Trotwood, Ohio,
do hereby certify that the foregoing Resolution is a true and correct copy of Resolution No.
_____ passed by the Trotwood City Council on the _____ day of _____
2016.

IN TESTIMONY WHEREOF, witness by hand and official seal this _____ day of
_____ 2016.

Sandra L. Riege Fuller, CMC
Clerk of Council