

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

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

WHEREAS, the Commission has long maintained a tradition of solemnizing its proceedings by allowing for an opening prayer before each meeting, for the benefit and blessing of the Commission; and

WHEREAS, the Commission wishes to maintain a tradition of solemnizing its proceedings by allowing for an opening prayer before each meeting, for the benefit and blessing of the Commission; 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 Legislature, upon which we desire to invoke divine guidance and blessing; and

WHEREAS, such prayer 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 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. *Id.*, 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.” *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 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, 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 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, “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 *Snyder v. Murray City Corp.*, 159 F.3d 1227, 1233 (10th Cir. 1998), *cert. denied*, the United States Court of Appeals for the Tenth Circuit held that “[w]e are obliged, therefore, to read *Marsh* as establishing the constitutional principle that the genre of government religious activity that has come down to us over 200 years of history and which we now call ‘legislative prayer’ does not violate the Establishment Clause;” and

WHEREAS, the Tenth Circuit held that the Establishment Clause and *Marsh* do not require that a public body “ensure a kind of equal access to [its] program of invitational prayers.” *Id.* Instead, “[w]hat matters under *Marsh* is whether the prayer to be offered fits within the genre of legislative invitational prayer that ‘has become part of the fabric of our society’ and constitutes a ‘tolerable acknowledgement of beliefs widely held among the people.’” *Id.* (quoting *Marsh*, 463 U.S. at 792.); and

WHEREAS, the Tenth Circuit noted that the “long-accepted genre” of legislative prayer is “often” one that “reflect[s] a Judeo-Christian ethic.” *Id.* at 1234; and

WHEREAS, the Tenth Circuit recognized that prayer by its very nature “assumes the existence of a supreme power,” and therefore, “all prayers ‘advance’ a particular faith or belief in one way or another.” *Id.* at 1234 n.10. Accordingly, “[t]he mere fact a prayer evokes a particular concept of God is not enough to run afoul of the Establishment Clause.” *Id.*; and

WHEREAS, the Tenth Circuit delineated the type of prayer that is “intolerable.” *Id.* at 1233. Specifically, “the kind of legislative prayer that will run afoul of the Constitution is one that proselytizes a particular religious tenet or belief, or that aggressively advocates a specific religious creed, or that derogates another religious faith or doctrine.” *Id.* at 1234; and

WHEREAS, the Tenth Circuit further held that public bodies may choose the speaker to deliver an invocation: “[T]he decision in *Marsh* also must be read as establishing the constitutional principle that a legislative body does not violate the Establishment Clause when it chooses a particular person to give its invocational prayers.” *Id.* at 1233. Concomitantly, “there can be no Establishment Clause violation merely in the fact that a legislative body chooses not to appoint a certain person to give its prayers.” *Id.*; and

WHEREAS, the Tenth Circuit held that selection of a certain person to deliver the invocation will violate the Establishment Clause when “the selection ‘stem[s] from an impermissible motive’” to “proselytize...or to disparage another faith, or to establish a particular religion as the sanctioned or official religion of the legislative body.” *Id.* at 1234 (quoting *Marsh*, 463 U.S. at 793.); and

WHEREAS, the Tenth Circuit made a number of key findings in *Snyder*, and the Commission hereby acknowledges and relies upon the most important of those findings, including the following:

1) The court noted that the city council had various members of the local religious communities offer invocations. *Id.* at 1228; and

2) Most of the prayers offered were at the request of the city council, usually in response to a form letter the council circulated to local religious communities. *Id.*; and

3) The city council could lawfully bar a speaker because he would “proselytize” his own views and “disparage” others by offering a mock, unconventional “prayer,” that would seek “to convert [the speaker’s] audience to his belief in the sacrilegious nature of governmental prayer.” *Id.* at 1235; and

4) The council therefore did not violate the Establishment Clause when it excluded the prayer at issue, as the prayer “[fell] well outside the genre of legislative prayers that the Supreme Court approved in *Marsh*”; the prayer explicitly attacked the genre itself; the record was devoid of any attempt by the council to promote or disparage any religion by excluding the prayer; and the prayer disparaged “those who believe that legislative prayer is appropriate.” *Id.* at 1235; and

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

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

1. In order to solemnize proceedings of the Mesa County Commission, it is the policy of the Commission to allow for an invocation or prayer to be offered before its meetings for the benefit of the Commission.

2. The prayer shall not be listed or recognized as an agenda item for the meeting or as part of the public business.

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 the County of Mesa. 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 Clerk to the Mesa County Commission (the “Clerk”) shall compile and maintain a database (the “Congregations List”) of the religious congregations with an established presence in the local community of Mesa County.

b. The Congregations List shall be compiled by referencing the listing for “churches,” “congregations,” or other religious assemblies in the annual Yellow Pages phone book(s) published for Mesa county, research from the Internet, and consultation with local chambers of commerce. All religious congregations with an established presence in the local community of Mesa County are eligible to be included in the Congregations List, and any such congregation can confirm its inclusion by specific written request to the Clerk.

c. 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 of Mesa County.

d. The Congregations List shall be updated, by reasonable efforts of the Clerk, in November of each calendar year.

e. Within thirty (30) days of the effective date of this policy, and on or about December 1 of each calendar year thereafter, the Clerk 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.

f. 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 leader,

The Mesa County Commission makes it a policy to invite members of the clergy in Mesa County to voluntarily offer a prayer 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 eligible to offer this important service at an upcoming meeting of the Commission.

If you are willing to assist the Commission in this regard, please send a written reply at your earliest convenience to the Clerk 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.

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 and ecumenism, the Commission requests only that the prayer 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.

On behalf of the Mesa County Commission, I thank you in advance for considering this invitation.

*Sincerely,
Clerk to the Commission*

g. As the invitation letter indicates, the respondents to the invitation shall be scheduled on a first-come, first-serve basis to deliver the prayers.

5. No invocation speaker shall receive compensation for his or her service.

6. The Clerk 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 a prayer at consecutive meetings of the Commission, or at more than three (3) Commission meetings in any calendar year.

7. Neither the Commission nor the Clerk shall engage in any prior inquiry, review of, or involvement in, the content of any prayer to be offered by an invocation speaker.

8. Shortly before the opening gavel that officially begins the meeting and the agenda/business of the public, the Chairperson of the Commission 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 do so to stand for those observances of and for the Commission.

9. 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 or against, 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 Mesa County.

10. To clarify the Commission's intentions, as stated herein above, the following disclaimer shall be included in at least 10 point font at the bottom of any printed Commission meeting agenda: "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 the Commission does not endorse the religious beliefs or views of this, or any other speaker."

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 County Commission of Mesa County, Colorado, on _____, 2008.

For: _____

Against: _____

THUS ADOPTED at the regular meeting of the County Commission of Mesa County, Colorado, on _____, 2008.

CLERK

CHAIR of COMMISSION