

**POLICY REGARDING OPENING INVOCATIONS
BEFORE MEETINGS OF THE OCONEE COUNTY COUNCIL**

WHEREAS, the Oconee County Council (“the Council”) is an elected legislative and deliberative public body, serving the citizens of Oconee County, South Carolina; and

WHEREAS, the Council 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 Council; and

WHEREAS, such prayer before deliberative public bodies has been consistently upheld as constitutional by American courts, including the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit, which includes South Carolina; 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 Supreme Court further held, “To invoke divine guidance on a public body. . . 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.*, at 792; 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, “Those 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 repeatedly clarified that “there is a crucial difference between *government* speech endorsing religion, which the Establishment Clause forbids, and *private* speech endorsing religion, which the Free Speech and Free Exercise Clauses protect.” *Bd. of Educ. of Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 250 (1990); and

WHEREAS, in *Simpson v. Chesterfield County Bd. of Supervisors*, 404 F.3d 276 (4th Cir. 2004), *cert. denied*, the United States Court of Appeals for the Fourth Circuit recently reviewed and specifically approved the prayer policy of a county board in which various clergy in a county's religious community were invited to present invocations before meetings of the board; and

WHEREAS, the Fourth Circuit made a number of key findings about the prayer policy ruled constitutional in *Simpson*, and the Council hereby acknowledges and relies upon the most important of those findings, including the facts that the policy there:

(1) Allowed for invocations for the benefit of the legislative body itself “rather than for the individual leading the invocation or for those who might also be present,” *Id.*, at 284; and

(2) Established a practice of compiling a list of local monotheistic congregations, “with addresses taken primarily from the phone book,” where to the county clerk would send an invitation each December addressed to the “religious leader” of each congregation, *Id.*, at 279; and

(3) Required the county clerk to schedule respondents to the invitation “to give the invocation on a first-come, first-serve basis,” *Id.*; and

(4) Thus, “made plain that [the county board] was not affiliated with any one specific faith by opening its doors to a wide pool of clergy.” *Id.*, at 286; and

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

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

WHEREAS, the Fourth Circuit’s ruling in *Simpson* can be distinguished from its earlier decision in *Wynne v. Town of Great Falls*, 376 F.3d 292 (4th Cir. 2002), *cert. denied*, where a town council “improperly ‘exploited’ a ‘prayer opportunity’ to ‘advance’ one religion over others.” *Id.*, at 298 (quoting *Marsh*, 463 U.S. at 794); and

WHEREAS, the Council intends to avoid all of the unique circumstances that rendered the practices at issue in *Wynne* unconstitutional, including the facts that:

(1) The Great Falls Town Council listed prayer as part of the agenda of each meeting and thus made the prayers “part of the public business,” *Wynne*, 376 F.3d at 301; and

(2) The Town Council’s resolution declared its intent that “the Town's prayers are not just for the council members but for all of the Town's citizens,” and thus prayers were “directed at” the citizenry, *Id.*, at 301, n.7; and

(3) Town Council members themselves delivered the prayers, *Id.*, at 294; and

(4) The Town Council “steadfastly refused” to invoke any “deity associated with any specific faith other than Christianity,” *Id.*, at 300, n.5; and

(5) The Town Council “advance[d] its own religious views in preference to all others,” *Id.*, at 302; and

(6) Town Council members publicly chided and “ostracized” those who refused to participate in their prayers, *Id.*, at 298; and

WHEREAS, the Council 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; and

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

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

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

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 Council 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 Oconee County. To ensure that such person (the “invocational speaker”) is selected from among a wide pool of the County’s clergy, on a rotating basis, the invocational speaker shall be selected according to the following procedure:

a. The Clerk to the Oconee County Council (the “Clerk”) shall compile and maintain a database (the “Congregations List”) of the religious congregations with an established presence in the local community of Oconee 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 Oconee County, research from the Internet, and consultation with local chambers of commerce. All religious congregations with an established presence in the local community of Oconee 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 Oconee 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 Oconee County Council makes it a policy to invite members of the clergy in Oconee County to voluntarily offer a prayer before the beginning of its meetings, for the benefit and blessing of the Council. As the leader of one of the religious congregations with

an established presence in the local community of Oconee County, or in your capacity as a chaplain for one of the fire departments or law enforcement agencies of Oconee County, you are eligible to offer this important service at an upcoming meeting of the Council.

If you are willing to assist the Council in this regard, please send a written reply at your earliest convenience to the Clerk to the Council at the address included on this letterhead. Clergy are scheduled on a first-come, first-serve basis. The dates of the Council'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 Council requests only that the prayer opportunity not be exploited as an effort to covert others to the particular faith of the invitational speaker, nor to disparage any faith or belief different than that of the invitational speaker.

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

*Sincerely,
Clerk to the Council*

- 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 invitational speaker shall receive compensation for his or her service.
6. The Clerk shall make every reasonable effort to ensure that a variety of eligible invitational speakers are scheduled for the Council meetings. In any event, no invitational speaker shall be scheduled to offer a prayer at consecutive meetings of the Council, or at more than three (3) Council meetings in any calendar year.
7. Neither the Council nor the Clerk shall engage in any prior inquiry, review of, or involvement in, the content of any prayer to be offered by an invitational speaker.
8. At the beginning of the meeting, and before the opening gavel, the Chairperson of the Council shall introduce the invitational speaker and the person selected to recite the Pledge of Allegiance following the prayer, and invite only those who wish to do so to stand for those observances of the Council.
9. This policy is not intended, and shall not be implemented or construed in any way, to affiliate the Council with, nor express the Council's preference for, any faith or religious

denomination. Rather, this policy is intended to acknowledge and express the Council's respect for the diversity of religious denominations and faiths represented and practiced among the citizens of Oconee County.

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

THUS INTRODUCED at the regular meeting of the County Council of Oconee County, South Carolina, on _____, 2007.

For: _____

Against: _____

THUS ADOPTED at the regular meeting of the County Council of Oconee County, South Carolina, on _____, 2007.

CLERK

CHAIR of COUNCIL