

Sponsored by: Councilwoman Snead

RESOLUTION NO. 2013-104

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA ESTABLISHING PROCEDURES FOR INVOCATIONS BEFORE MEETINGS OF THE MARATHON CITY COUNCIL; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Council of the City of Marathon (the "Council") is an elected legislative and deliberative public body, serving the residents, businesses and property owners of Marathon, Florida; and

WHEREAS, the Council wishes to re-establish a tradition of solemnizing its proceedings by allowing for an opening invocation before each meeting, for the benefit and blessing of the Council; and

WHEREAS, the Council now desires to adopt this formal, written policy to clarify and establish its invocation practices; and

WHEREAS, our country's founders recognized that every person possesses 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 Council, upon which we desire to invoke divine guidance and blessing; and

WHEREAS, such invocation 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"; and

WHEREAS, the 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." 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"; and

WHEREAS, the Supreme Court 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; 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”; and

WHEREAS, the Supreme Court also famously observed in *Zorach v. Clauson*, 343 U.S. 306, (1952), “[w]e are a religious people whose institutions presuppose a Supreme Being”; 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; 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”; 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; 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, 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, the Council 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 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 Florida Constitutions and statutes.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA:

Section 1. The above recital are true and correct and incorporated herein.

Section 2. In order to solemnize proceedings of the 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.

Section 3. The invocation shall not be listed or recognized as an agenda item for the meeting or as part of the public business.

Section 4. No member of the Council or employee of the City or any other person in attendance at the meeting shall be required to participate in any invocation that is offered.

Section 5. The invocation shall be voluntarily delivered by an eligible member of the clergy, as specified below. To ensure that such person (the "invocation speaker") is selected from among a wide pool of local clergy, on a rotating basis, the invocation speaker shall be selected according to the following procedure:

- a. The City Clerk shall compile and maintain a database (the "Congregations List") of the religious congregations with an established presence in the local community of Marathon and Monroe 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 Marathon and Monroe County; research from the Internet; and consultation with the Marathon Chamber of Commerce and other local chambers of commerce. All religious congregations with an established presence in the local community of Marathon and Monroe County are eligible to be, and shall be, included in the Congregations List. Any such congregation not otherwise identified for participation may request its inclusion by specific written communication to the City Clerk.
- c. This policy is intended to be and shall be applied in a way that is all-inclusive of every diverse religious congregation in Marathon and Monroe 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 Council's invitation and participate. Should a question arise as to the authenticity of a religious congregation, the City Clerk shall refer to criteria used by the Internal Revenue Service in its determination of those religious organizations that would legitimately qualify for Section 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 of Marathon and Monroe County.

- e. The Congregations List shall also include the name and contact information of any religious congregation located outside Marathon and Monroe County, if such religious congregation is attended by a resident or residents of Marathon or Monroe County, and such resident requests the inclusion of said religious congregation by specific written communication to the City Clerk.
- f. The Congregations List shall be updated, by reasonable efforts of the City Clerk, on or about the month of 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 City 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.
- h. The invitation shall be dated at the top of the page, signed by the City Clerk at the bottom of the page, and read as follows:

Dear Religious Leader,

The Marathon City Council makes it a policy to invite members of the clergy in Marathon and Monroe County to voluntarily offer an invocation 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, or in your capacity as a chaplain for one of the local fire departments or law enforcement agencies, or as the religious leader of one or more Marathon and Monroe County residents, 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 City Clerk 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 invocation 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 City Council of City of Marathon, I thank you in advance for considering this invitation.

*Sincerely,
City Clerk*

Section 6. As the invitation letter indicates, the respondents to the invitation shall be scheduled on a first-come, first-serve basis to deliver the invocations.

Section 7. No invocation speaker shall receive compensation for his or her service.

Section 8. The City Clerk shall make every reasonable effort to ensure that a variety of eligible invocation speakers are scheduled for the Council meetings. In any event, no invocation speaker shall be scheduled to offer an invocation at consecutive meetings of the Council, or at more than three (3) Council meetings in any calendar year.

Section 9. Neither the Council nor the City Clerk shall engage in any prior inquiry, review of, or involvement in, the content of any invocation to be offered by an invocation speaker.

Section 10. Shortly before the opening gavel that officially begins the meeting and the agenda/business of the public, the Mayor 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 Council.

Section 11. 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 or against, 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 residents of Marathon and Monroe County.

Section 12. To clarify the Council's intentions, as stated herein above, the following disclaimer shall be included in at least 10 point font at the bottom of any printed Council meeting agenda: "Any invocation that may be offered before the official start of the Council meeting shall be the voluntary offering of a private citizen, to and for the benefit of the Council. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the Council, and the Council is not allowed by law to endorse the religious beliefs or views of this, or any other speaker."

Section 13. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 12th DAY OF DECEMBER 2013.

THE CITY OF MARATHON, FLORIDA



Dick Ramsay, Mayor

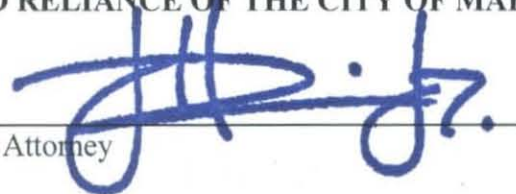
AYES: Snead, Bull, Keating, Ramsay
NOES: Senmartin
ABSENT: None
ABSTAIN: None

ATTEST:



Diane Clavier, City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:



City Attorney