

RESOLUTION NO. 2012-11

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHINO,  
CALIFORNIA, ESTABLISHING A POLICY REGARDING INVOCATIONS AT  
MEETINGS OF THE CITY COUNCIL OF THE CITY OF CHINO

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

WHEREAS, legislative bodies in America have long maintained a tradition of solemnizing proceedings by allowing for an opening prayer before each meeting, for the benefit and blessing of the legislative bodies; and

WHEREAS, since the incorporation of the City, the City Council has followed a practice of selecting a member of local clergy to provide invocations at City Council meetings; and

WHEREAS, the City Council now desires to adopt this formal, written policy to clarify and codify its invocation practices; 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 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 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, the City Council intends, and has intended in past practice, to adopt a policy that upholds an individual’s “free exercise” rights under the First Amendment; 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 Community Schools v. Mergens, 496 U.S. 226, 250 (1990); and

WHEREAS, the City 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, this policy set forth below has been approved by two federal courts in the cases of Pelphrey v. Cobb County (11<sup>th</sup> Cir. 2008) 547 F.3d 1263 and Rubin v. City of Lancaster (2011) 802 F.Supp.2d 1107; and

WHEREAS, the City Council recognizes its constitutional duty to interpret, construe, and amend its policies and ordinances to comply with constitutional requirements as they are announced.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chino, California, that the City Council does hereby adopt and establish the following written policy regarding opening invocations before meetings of the City Council:

1. In order to solemnize proceedings of the City Council, it is the policy of the City Council to allow for an invocation or prayer to be offered at its meetings for the benefit of the City Council and the community.
2. The prayer shall not be listed or recognized as an agenda item for the meeting so that it may be clear the prayer is not considered a part of the public business.

3. No member of the City Council or City employee 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 or a religious leader in the City of Chino. To ensure that such person (the "invocational speaker") is selected from among a wide pool of the City's clergy/religious leaders, on a rotating basis, the invocational 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 City of Chino.

b. The Congregations List shall be compiled by referencing the listing for "churches," "congregations," or other religious assemblies in the annual Yellow Pages telephone directory or directories published for the City of Chino, research from the Internet, and consultation with local chambers of commerce. All churches, congregations or other religious assemblies with an established presence in the City of Chino are eligible to be included in the Congregations List, and any such church, congregation or religious assembly 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 the City of Chino or any nearby military facilities.

d. The Congregations List shall be updated, by reasonable efforts of the City 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 City Clerk shall mail an invitation addressed to the "religious leader" of each church, congregation or religious assembly 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 City Clerk at the bottom of the page, and read as follows:

*Dear religious leader,*

*The City Council makes it a policy to invite members of the clergy in the City of Chino to voluntarily offer a prayer before the beginning of its meetings, for the benefit and blessing of the City Council. As the leader of one of the religious congregations with an established presence in the local community of the City of Chino, or in your capacity as a chaplain for one of the fire departments or law enforcement agencies of the City of Chino, you are eligible to offer this important service at an upcoming meeting of the City Council.*

*If you are willing to assist the City 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, or other random basis. The dates of the City 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 City Council requests only that the prayer opportunity not be exploited as an effort to convert others to the particular faith of the invitational speaker, nor to disparage any faith or belief different from that of the invitational speaker.*

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

*Sincerely,  
City Clerk*

g. Consistent with paragraph 7 hereof and, as the invitation letter indicates, the respondents to the invitation shall be scheduled on a first-come, first-served, or other random basis to deliver the prayers.

h. If the selected invitational speaker does not appear at the scheduled meeting, the Mayor may ask for a volunteer from among the Council or the audience to deliver the invocation.

i. The City Clerk shall post the following information on the City's webpage: (i) this resolution, (ii) the Congregation List and (iii) the invitation set forth herein to churches, congregations and religious associations in the City of Chino.

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

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

7. Neither the City Council nor the City 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. This policy shall apply to all Commissions of the City of Chino.

9. Immediately following the opening gavel that officially begins the meeting, the Mayor or presiding officer of a commission, shall introduce the invitational speaker and the person selected to recite the Pledge of Allegiance and invite only those persons who wish to do so to stand for those observances with the City Council.

10. This policy is not intended, and shall not be implemented or construed in any way, to affiliate the City Council with, nor express the City Council's preference for, any faith or religious denomination. Rather, this policy is intended to acknowledge and express the City Council's respect for the diversity of religious denominations and faiths represented and practiced among the citizens of Chino.

NOW, THEREFORE, BE IT FURTHER RESOLVED that this policy shall become effective immediately upon approval by the City Council of the City of Chino, California.

APPROVED AND ADOPTED THIS 20<sup>TH</sup> DAY OF MARCH 2012.

  
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DENNIS R. YATES, MAYOR

NEW #9

ATTEST:

  
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ANGELA ROBLES, CITY CLERK

State of California )  
County of San Bernardino ) §  
City of Chino )

I, Angela Robles, City Clerk of the City of Chino, do hereby certify the foregoing Resolution was duly adopted by the Chino City Council at a regular meeting held on the 20<sup>th</sup> day of March 2012, by the following votes:

AYES: COUNCIL MEMBERS: YATES, HAUGHEY, DUNCAN, ELROD, ULLOA

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

  
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ANGELA ROBLES, CITY CLERK