

Common Council 8-13-09
Committee of the Whole 8-11-09
J&A 8-4-09
THIRD AMENDED RESOLUTION

RESOLUTION ADOPTED
AUG 13 2009
BY COUNCIL

File # 2009-08-022

WHEREAS, the Common Council received a communication from Freedom From Religion Foundation dated February 6, 2009 requesting the Common Council discontinue current invocation procedures for the Common Council Meetings, and

WHEREAS, the City of La Crosse Common Council ("the Council") is an elected legislative and deliberative public body, serving the citizens of La Crosse, Wisconsin; and

WHEREAS, the Council wishes to maintain a tradition of solemnizing its proceedings by allowing for an opening prayer ~~before~~ at 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 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, 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. *Marsh v. Chambers*, 463 U.S. 783, 792 (1983). 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 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." *Id.* at 794-95; and

WHEREAS, the Council hereby acknowledges the general principles provided by *Simpson v. Chesterfield County Bd. of Supervisors*, 404 F.3d 276 (4th Cir. 2004) including the following factors:

(1) Allowing 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) Establishing a practice in which various clergy in the county's religious community were invited on a rotating basis to present invocations before meetings of the board, *Id.*, at 279; and

(3) Thus, "made plain that [the county board] was not affiliated with any one specific faith" by allowing different persons from different religious convictions and backgrounds to offer the invocations. *Id.*, at 286; 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:

AUG 28 2009

Clerk ✓
Mayor

(1) 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, *Wynne*, 376 F.3d at 301, n.7; and

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

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

(4) Town Council members publicly chided and "ostracized" those who refused to participate in their prayers, *Id.*, at 298; 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 Wisconsin Constitutions and statutes.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that it hereby adopts the attached policy dated August 11, 2009 August 4, 2009 regarding opening invocations ~~before~~ at meetings of the Common Council.

BE IT FURTHER RESOLVED that the list of speakers for each calendar year shall be scheduled January to December.

BE IT FURTHER RESOLVED that it hereby authorizes City Staff to take any and all steps necessary in connection with said policy.

FINAL ADOPTION: 7-9-09

**POLICY AND PROCEDURE REGARDING OPENING INVOCATIONS
BEFORE MEETINGS OF THE LA CROSSE COMMON COUNCIL**

WHEREAS, the City of La Crosse Common Council ("the Council") is an elected legislative and deliberative public body, serving the citizens of La Crosse, Wisconsin; and

WHEREAS, the Council wishes to maintain a tradition of solemnizing its proceedings by allowing for an opening prayer at each monthly regular meeting of the Council, for the benefit and blessing of the Council; and

WHEREAS, the 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, 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. *Marsh v. Chambers*, 463 U.S. 783, 792 (1983). 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 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." *Id.* at 794-95; and

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(1) Allowing 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) Establishing a practice in which various clergy in the county's religious community were invited on a rotating basis to present invocations before meetings of the board, *Id.*, at 279; and

(3) Thus, "made plain that [the county board] was not affiliated with any one specific faith" by allowing different persons from different religious convictions and backgrounds to offer the invocations. *Id.*, at 286; 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 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, *Wynne*, 376 F.3d at 301, n.7; and

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

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

(4) Town Council members publicly chided and "ostracized" those who refused to participate in their prayers, *Id.*, at 298; 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 Wisconsin Constitutions and statutes.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that it hereby adopts the following written policy regarding opening invocations at the beginning of meetings of the Council, to wit:

1. 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 at its monthly regular meetings of the Council for the benefit of the Council.

2. The invocation and pledge of allegiance shall ~~not~~ be listed or recognized on the agenda.

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 or invocation shall be voluntarily delivered by an eligible member of the clergy in the City of La Crosse. To ensure that such person (the "invocation speaker") is selected from among a wide pool of the City's 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 La Crosse.

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 the City of La Crosse, research from the Internet, and consultation with local chambers of commerce. All religious congregations with an established presence in the local community of La Crosse are eligible to 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 the local community of La Crosse. 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 City Clerk'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 the local community of La Crosse.
- e. The Congregations List shall be updated, by reasonable efforts of the City Clerk, in November of each calendar year.
- f. 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.
- g. The invitation shall be dated at the top of the page, signed by the City Clerk or designee at the bottom of the page, and read as follows:

Dear religious leader,

The City of La Crosse Common Council makes it a policy to invite members of the clergy in the local community of La Crosse to voluntarily offer an invocation at 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, you are eligible to offer this 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 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 City of La Crosse Common Council, I thank you in advance for considering this invitation.

*Sincerely,
City Clerk*

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

5. No invocation 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 invocation speakers are scheduled for the monthly regular Council meetings. In any event, no invocation speaker shall be scheduled to offer a prayer at consecutive monthly regular meetings of the Council, or at more than two (2) such Council meetings in any calendar year.

7. Neither the 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 invocation speaker.

8. At the opening of the meeting and the agenda/business of the public, the presiding officer of the Council shall introduce the person selected to recite the Pledge of Allegiance, if any, and the invocation speaker to follow the Pledge of Allegiance, and invite only those persons that wish to participate to stand for those observances of and for 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 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 citizens of La Crosse.

10. 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 at 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 will not endorse the religious beliefs or views of this, or any other speaker."

BE IT FURTHER RESOLVED that this resolution shall supersede any prior resolutions of the Council on this subject matter, including without limitation, the Resolution Adopting a Chaplain for all Council Meetings dated 2/14/74 and 5/8/75 as well as Resolution #41841 adopted 5/12/83.

BE IT FURTHER RESOLVED City staff are authorized to take any and all action necessary to effectuate this Resolution.

PROPOSED INTRODUCTION
PLEDGE OF ALLEGIANCE AND INVOCATION
[READ AND STATED BY THE PRESIDING OFFICER]

Welcome to the [Date] regular meeting of the City of La Crosse Common Council. At this time, the Council will recite the Pledge of Allegiance and listen to an invocation.

Tonight's Pledge of Allegiance will be led by _____. [Only if presented by someone other than the Presiding Officer]

Tonight's Invocation will be presented solely for the benefit of the Council by _____ of/from _____.

For those persons that wish to participate, please stand as you are able.