RESOLUTION NO. 2017-

A RESOLUTION APPROVING AN AMENDMENT OF THE POLICY REGARDING OPENING INVOCATIONS BEFORE MEETINGS OF THE CITY COUNCIL OF THE CITY OF LEAGUE CITY, TEXAS

WHEREAS, the City Council of League City, Texas ("the Council") is an elected legislative and deliberative public body, serving the citizens of League City, Texas; and

WHEREAS, the City Council previously adopted Resolution 2014-16 approving a policy regarding opening invocations before meetings of the City Council of the City of League City; and

WHEREAS, since League City's chartering in 1962, the Council has 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, the Council 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 Council; and

WHEREAS, the Council now desires to amend 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 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. *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 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 *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 reviewed and specifically approved as constitutional the prayer policy of a county board, and made a number of key findings about said policy; and

WHEREAS, the Council is not bound by decisions of the Fourth Circuit, but hereby acknowledges the general guidance provided by the most important of that court's findings in *Simpson*, including the facts that the policy there:

A. 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

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

C. Required the county clerk to schedule respondents to the invitation "to give the invocation on a first-come, first-serve basis," *Id.*; and

D. 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, in *Rubin v. City of Lancaster*, 710 F.3d 1087 (9th Cir. Cal. 2013), the United States Court of Appeals for the Ninth Circuit reviewed and specifically approved as constitutional a city council's prayer policy, and made a number of key findings about said policy; and

WHEREAS, the Council is not bound by decisions of the Ninth Circuit, but hereby acknowledges the general guidance provided by the most important of that court's findings in *Rubin*, including the facts that the policy there:

A. The City of Lancaster took every feasible precaution, short of requiring volunteer prayer-givers to refrain altogether from referencing sectarian figures, to ensure neutrality, *Id.*, at 1097; and

B. No person attending a city council meeting was required to participate in any prayer, *Id.*, at 1097; and

C. No volunteer prayer-giver was paid to pray, *Id.*; and

D. The council never inquired into or reviewed the content of any prayer to be offered, *Id.*; and

E. The council never attempted to influence the determination of which volunteer prayer-giver was selected to pray, *Id.*, at 1098; and

F. The City of Lancaster designed its policy to adhere to *Marsh's* strictures and asked volunteer prayer-givers to do the same, *Id.*; and

WHEREAS, the Ninth Circuit focused its inquiry on the policy's neutrality and the principle of private choice, not on the number of volunteers from a particular sect, *Id.*, at 1100; and

WHEREAS, the Ninth Circuit rejected a request that it order the City of Lancaster "to review as a matter of course the text of every proposed prayer, approving for delivery only those drafts rid of all references to saints, disciples, prophets, deities, and the like," *Rubin*, 710 F.3d at 1100; and

WHEREAS, the Ninth Circuit not only held that prayers "in the name of . . ." religious figures are constitutionally permissible, but a policy prohibiting such prayers is wrought with "First Amendment infirmities," *Id.*, at 1100; and

WHEREAS, on the same day the Ninth Circuit decided *Rubin*, the Eleventh Circuit decided *Atheists of Fla., Inc. v. City of Lakeland*, 713 F.3d 577 (11th Cir. Fla. 2013), and reached the same conclusion that the City of Lakeland's policy permitting prayer before city commission legislative sessions was constitutionally permissible; and

WHEREAS, in *Pelphrey v. Cobb County*, 547 F.3d 1263, 1278 (11th Cir. 2008), the United States Court of Appeals for the Eleventh Circuit followed the rationale and reasoning of *Marsh* and *Simpson* and upheld the constitutionality of a county commission's invocation policy;

WHEREAS, the Eleventh Circuit in *Pelphrey* specifically rejected the argument that the Establishment Clause permits only nonsectarian prayers at legislative meetings, holding instead that prayers are permitted as long as "there is no indication the that prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief," *Id.* at 1266;

WHEREAS, in *Town of Greece v. Galloway*, 572 U.S. ___ (2014), the United States Supreme Court determined that prayer delivered during the ceremonial portion of the town's meeting, when board members are not engaged in policy making, but in more general functions, such as swearing in new police officers and presenting proclamations, suggests that the prayer's purpose and effect are to acknowledge religious leaders and the institutions they represent rather than to exclude or coerce nonbelievers, and does not violate the First Amendment; and

WHEREAS, the Council intends to avoid all of the unique circumstances that rendered the unconstitutional practices at issue in *Wynne v. Town of Great Falls*, 376 F.3d 292 (4th Cir. 2002), *cert. denied*, where a town Board "improperly 'exploited' a 'prayer opportunity' to 'advance' one religion over others." *Id.*, at 298 (quoting *Marsh*, 463 U.S. at 794), including the facts that:

A. 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

B. The town council "steadfastly refused" to invoke any "deity associated with any specific faith other than Christianity," *Id.*, at 300, n.5; and

C. The town council "advance[d] its own religious views in preference to all others," *Id.*, at 302; and

D. 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 continue 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 Texas Constitutions and statutes.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF LEAGUE CITY, TEXAS, as follows:

Section 1. In order to solemnize proceedings of the City Council of League City, Texas, 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 2. 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.

Section 3. The prayer shall be voluntarily delivered by an eligible member of the clergy in League City, Texas, except as provided in Section 4. To ensure that such person (the "invocation speaker") is selected from among a wide pool of League City, Texas' clergy, on a rotating basis, the invocation speaker shall be selected according to the following procedure:

A. The City Secretary shall compile and maintain a database (the "Congregations List") of the religious congregations with an established presence in League City, Texas.

B. All congregations with an established presence in League City, Texas are eligible to appear in the Congregations List, and any such congregation can confirm its inclusion by specific written request to the Secretary. 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 League City, Texas.

C. The City Secretary may not inquire into the faith, denomination, or other religious belief of a congregation before adding it to the Congregations List.

D. The Congregations List shall be compiled by referencing the listing for "churches," "congregations," or other religious assemblies in the annual telephone directory (e.g. *Yellow Page*) published for League City, Texas, research from the internet and newspaper, and consultation with local chambers of commerce.

E. The Congregations List shall be updated, by reasonable efforts of the City Secretary, 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 Secretary shall mail an invitation addressed to the "religious leader" of each congregation listed on the Congregation List, as well as to the individual chaplains on the Congregations List.

G. The invitation shall be dated at the top of the page, signed by the City Secretary at the bottom of the page, and state:

> *Dear League City Religious Leader,*
>
> *The City Council of League City, Texas makes it a policy to invite members of the clergy in League City 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, or in your capacity as a chaplain for one of the local fire departments or law enforcement agencies, you and other clergy affiliated with your congregation 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 Secretary to the Council at the address included on this letterhead. Clergy are scheduled on a first-come, first-served 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. However, please try not to exceed no more than five (5) minutes for your presentation. To maintain a spirit of respect and ecumenism, the City Council requests*

that the prayer opportunity not be exploited as an effort to proselytize or convert others, nor to disparage any faith or belief different than that of the invocation speaker.

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

Sincerely,
City Secretary

Section 4. In the event that the member of the clergy scheduled to be the invocation speaker at a meeting of the City Council cancels with insufficient notice to allow the City Secretary to arrange for an alternate invocation speaker, or is not present and willing at the beginning of the meeting to voluntarily deliver a prayer in accordance with this policy, the presiding officer at said City Council meeting may select from a volunteer present at the meeting to be the invocation speaker for that meeting.

Section ~~4~~5. The volunteer prayer-giver shall deliver the prayer or invocation in his or her capacity as a private citizen, and according to the dictates of his or her own conscience.

Section ~~5~~6. No guidelines or limitations shall be issued regarding an invocation's content, except that the Council shall request by the language of this policy that no prayer should proselytize or advance any faith, or disparage the religious faith or non-religious views of other, or exceed five (5) minutes in length.

Section ~~6~~7. No volunteer prayer-giver shall receive supplemental compensation of any kind for providing the prayer or invocation.

Section ~~7~~8. No volunteer prayer-giver shall be scheduled to offer a prayer at consecutive meetings of the Council, or at more than six (6) Council meetings in any calendar year.

Section ~~8~~9. No member of the Council shall engage in any prior inquiry, review of, or involvement in, the content of any prayer to be offered by the scheduled volunteer prayer-giver.

Section ~~9~~10. To clarify the Council's intentions, as stated herein above, the following disclaimer shall be included in at least ten (10) point font at the bottom of any printed agenda published by City Council:

"*Any invocation that may be offered before the official start of the City 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 do not necessarily represent the religious beliefs or views of the Council in part or as a whole. No member of the community is required to attend or participate in the invocation and such decision will have no impact on their right to actively participate in the business of the Council.*"

Section 11~~0~~. This policy in 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 League City, Texas.

Section 12~~1~~. All resolutions and agreements in conflict herewith are hereby repealed to the extent of the conflict only.

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

PASSED AND APPROVED at the regular meeting of the City Council of League City, Texas, on the _____ day of _____, 2017.

_____
PAT HALLISEY
Mayor

ATTEST:

_____
DIANA STAPP
City Secretary

APPROVED AS TO FORM:

_____
NGHIEM V. DOAN
City Attorney