

**RESOLUTION ADOPTING A POLICY REGARDING OPENING INVOCATIONS  
BEFORE MEETINGS OF THE FORSYTH COUNTY BOARD OF COMMISSIONERS**

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**WHEREAS**, the Forsyth County Board of Commissioners ("the Board") is an elected legislative and deliberative public body, serving the citizens of Forsyth County, North Carolina; and

**WHEREAS**, the Board 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 Board; and

**WHEREAS**, the Board now desires to adopt this formal, written policy to clarify and codify its invocation practices;

**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 North 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 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 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 (4<sup>th</sup> 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 Board hereby acknowledges and henceforth 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," whereto 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 (4<sup>th</sup> 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 Board intends to avoid the combination of unique circumstances that rendered the practices at issue in *Wynne* unconstitutional, including the facts that:

(1) Town Council members themselves delivered the prayers, *Id.*, at 294; 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 Board 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 Board 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 Board accepts as binding the applicability of general principles of law and all the rights and obligations afforded under the United States and North Carolina Constitutions and statutes.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Commissioners of Forsyth County, North Carolina, that the Board hereby adopts the following written policy regarding opening invocations before meetings of the Board, to wit:

1. In order to solemnize proceedings of the Forsyth County Board of Commissioners, it is the policy of the Board to allow for an invocation or prayer to be offered before its meetings for the benefit of the Board.

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 or employee of the Board 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/religious leader in Forsyth County. To ensure that such person (the "invocational speaker") is selected from among a wide pool of the County's clergy/religious leaders, on a rotating basis, the invocational speaker shall be selected according to the following procedure:

a. The Clerk to the Board (the "Clerk") shall compile and maintain a database (the "Congregations List") of the religious congregations with an established presence in the local community of Forsyth 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 Forsyth County, research from the Internet, and consultation with local chambers of commerce. All religious congregations with an established presence in the local community of Forsyth 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 Forsyth 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 Forsyth County Board of Commissioners makes it a policy to invite members of the clergy in Forsyth County to voluntarily offer a prayer before the beginning of its meetings, for the benefit and blessing of the Board. As the leader of one of the religious congregations with an established presence in the local community of Forsyth County, or in your capacity as a chaplain for one of the fire departments or law enforcement agencies of Forsyth County, you are eligible to offer this important service at an upcoming meeting of the Board.*

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

*On behalf of the Forsyth County Board, I thank you in advance for considering this invitation.*

*Sincerely,  
Clerk to the Board*

- 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 invocational speaker shall receive compensation for his or her service.
6. The Clerk shall make every reasonable effort to ensure that a variety of eligible invocational speakers are scheduled for the Board meetings. In any event, no invocational speaker shall be scheduled to offer a prayer at consecutive meetings of the Board, or at more than three (3) Board meetings in any calendar year.
7. Neither the Board nor the Clerk shall engage in any prior inquiry, review of, or involvement in, the content of any prayer to be offered by an invocational speaker.
8. Shortly before the opening gavel that officially begins the meeting and the agenda/business of the public, the Chair of the Board shall introduce the invocational 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 Board.

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

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

THUS INTRODUCED at the regular meeting of the Board of Commissioners of Forsyth County, North Carolina, on April 23, 2007.

For: \_\_\_\_\_

Against: \_\_\_\_\_

THUS ADOPTED at the regular meeting of the Board of Commissioners of Forsyth County, North Carolina, on April 23, 2007.

\_\_\_\_\_  
CLERK

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CHAIR of BOARD