

## SULTAN CITY COUNCIL AGENDA ITEM COVER SHEET

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ITEM NO: D-2  
DATE: January 14, 2010  
SUBJECT: Council meeting prayer/invocation  
CONTACT PERSON: Deborah Knight, City Administrator

### ISSUE:

The issue before the city council is to consider a request by Council member Pinson to begin council meetings with prayer.

### STAFF RECOMMENDATION:

This is a council member request. Information is provided by staff to assist the council in its discussion. There is no staff recommendation.

### SUMMARY:

Council member Pinson contact Mayor Eslick and city clerk, Laura Koenig in accordance with council procedures, and asked to add a discussion of starting each council meeting with prayer. Attachment A was provided by Council member Pinson.

### DISCUSSION:

There is very little information regarding the use of invocations or prayers at council meetings. The following information is an excerpt from the website [Religioustolerance.org](http://www.religioustolerance.org)<sup>1</sup>. Attachment B provides additional information from the site.

The Bill of Rights required in the *Establishment Clause* of the *First Amendment* that there shall be no establishment of religion by the federal government. Additional amendments to the Constitution, and its interpretations by the courts, led to the concept of separation of church and state at the federal, state, and municipal levels of government. The guiding principles are that:

- Individuals are guaranteed almost complete freedom of religious expression.
- Government and their agencies (including public schools):

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<sup>1</sup> [http://www.religioustolerance.org/sep\\_c\\_st4.htm](http://www.religioustolerance.org/sep_c_st4.htm)

- May not recognize one religious faith as more valid than any other faith or secularism.
- May not promote religion above secularism.
- Will not promote secularism above religion.

Current precedence and court decisions appear to have reached a compromise in the matter of invocations before government bodies. The consensus is that such invocations do not constitute private speech, which is fully protected.

They seem to agree that it is acceptable to mention "God" in generic prayers recited during invocations. But it is not permissible to mention a specific God or religion by name. So one can appeal for the protection of "God" in the generic sense. But one is not permitted to mention the name of Allah, Diana, Jehovah, Jesus, Krishna, or any of the thousands of other Gods, Goddesses and God-men who have been worshiped by followers of different religions.

This would seem to violate the third principle listed above: the promotion of religion above secularism. But it appears that the courts and legislative bodies do not consider this to have a significantly serious impact to warrant being declared unconstitutional.

The First Amendment "*giveth*," because it guarantees almost uninhibited personal religious freedom. But the First Amendment also "*taketh away*." It requires governments, including municipalities and Boards of Education, to remain religiously neutral; they may not promote either a religious or a secular way of life.

### Municipal Research

The following information was provided by Municipal Research to another municipality:

*"The conclusion of the legal staff at MRSC is that a city council or county commission can establish a policy providing that public meetings be opened with a nondenominational prayer or moment of silence or reflection. Any prayer should not be supportive of a particular faith or specific religion.*

*The legal concern with such an invocation is whether it would violate provisions in the state and federal constitutions that prohibit the use of public money or property to support any religious establishment. While I am not aware of a court case from this state, there are cases from other states on this issue. It is noted in McQuillin, Municipal Corporations, Third Edition, Vol. 4, Sec. 13.07 as follows:*

*"The invocation of a nondenominational prayer or, alternatively, a silent meditation of short duration prior to the commencement of regular meetings of a city council has been deemed not to violate the Establishment Clause."*

*While we have never conducted a formal survey of all the cities and towns in Washington on this subject, we are aware that there are a number of municipalities that*

*do begin council meetings with such a nondenominational invocation. This really is a policy decision for the city council.*

*There is case law that has upheld the use of nonsectarian prayer at city council meetings.*

In October 2008 Legal Consultant Bob Meinig added the following note:

*“In Pelphery v. Cobb County, \_F.3<sup>rd</sup>\_ (11<sup>th</sup> Cir., 10/28/08) The US Circuit Court of Appeals held that the Constitution does not allow only nonsectarian prayers at county commission and planning commission meetings. The court upheld a county policy that allowed volunteer leaders of different religions, on a rotating basis, to offer invocations with a variety of religious expressions.”*

#### ALTERNATIVES:

City staff received a number of responses to a query regarding council invocations in Washington State. The city received several responses. Those cities that responded used one of the following practices:

1. Council members gather before the regular council meeting begins and pray together.
2. Council members hold a “moment of silence” after the regular council meeting begins.
3. Invocation is given by council member(s) at each meeting
4. Invocation given only at the first council meeting of every year

The Religoustolerance.org website suggests two additional alternatives. Neither has been tested in the courts:

Public Comment Period. Many municipal governments set aside time on their meeting agendas during which individual members of the public can address the council on any subject. Often a defined interval is specified. The First Amendment would presumably guarantee the person freedom of speech, and would allow them to give an invocation with any religious content.

Open Forum. A council might schedule a time for an invocation at each meeting, and then select an individual to deliver it from a representative sampling of religious and secular groups which are active in their area. By taking this approach, the municipality would avoid recognizing one religious faith as more valid than any other faith or secularism; would not promote religion above secularism; and would not promote secularism above religion.

**FISCAL IMPACT:**

There is no direct fiscal impact from opening the council meeting with an invocation or prayer. If the issue becomes controversial, it may require additional attorney time to address council or public concerns.

**RECOMMENDED ACTION:**

This is a council policy decision regarding the council's agenda. There is no staff recommendation.

**ATTACHMENTS:**

A – Councilmember Pinson's Proposal

B – Relegioustolerance.org webpage [www.religioustolerance.org/sep\\_c\\_st4.htm](http://www.religioustolerance.org/sep_c_st4.htm)

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**COUNCIL ACTION:**

**DATE:**

## **Attachment A**

Whereas the first amendment of the Constitution of the United States guarantees freedom of religion, e.g. "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof..."

Whereas the personal liberties guaranteed by the Constitution of the United States have been eroded through legislative and court action

Whereas exercising a right actively affirms its value and serves to perpetuate its protection

Whereas the United States Supreme Court has upheld the constitutionality of opening legislative sessions with prayer (Marsh v. Chambers, 463 U.S. 783, 1983)

Whereas there are members of the current city council who find value in seeking Divine Guidance through prayer

Therefore, let the regularly scheduled city council meetings of the Great City of Sultan, Washington begin with a brief, voluntary prayer, offered on a rotating basis by council members who wish to participate.

**Note that this is not a proposed *law* or *ordinance*. Rather this is a proposal for a new practice at Sultan city council meetings.**

Councilman Sam Pinson

## Attachment B

### <sup>2</sup>The guiding principles:

The authors of the U.S. Constitution were concerned about the potential power of religious institutions to generate conflict, if they were linked in any way with the government. At the time that the Constitution was written, Europe was enjoying their first period of relative religious peace following many decades of intra-religious warfare that had caused the deaths of many millions of people. The authors of the Bill of Rights required in the *Establishment Clause* of the *First Amendment* that there shall be no establishment of religion by the federal government. Further amendments to the Constitution, and its interpretations by the courts, led to the concept of [separation of church and state](#) at the federal, state, and municipal levels of government.

The guiding principles are that:

- Individuals are guaranteed almost complete freedom of religious expression.
- Government and their agencies (including public schools):
  - May not recognize one religious faith as more valid than any other faith or secularism.
  - May not promote religion above secularism.
  - Will not promote secularism above religion.

Some historians have attributed the strength of religious institutions in the U.S., and the relative peace among faith groups, to this separation principle.

These criteria are continuously in a state of creative tension. Americans are divided on this aspect of religion:

- Many Christian Americans feel that prayer forms part of their religious heritage. They want [student Christian prayers to be scheduled in public school classrooms](#), their [school board to pray a Christian prayer before its meetings](#), their town or city councils to open meetings with a Christian prayer, etc.
- Many non-Christians and secularists are opposed to prayer, particularly if it contains Christian themes.
- Some individuals of all religions and none feel that a [wall of separation](#) must be maintained between religion and the government and its agencies; they regard this factor as outweighing any personal religious considerations.

Current precedence and court decisions appear to have reached a compromise in the matter of invocations before government bodies. The consensus is that such invocations do not constitute private speech, which is fully protected. They seem to agree that it is acceptable to mention "*God*" in generic prayers recited during

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<sup>2</sup> Attachment B is taken from the Religious Tolerance website at [http://www.religioustolerance.org/sep\\_c\\_st4.htm](http://www.religioustolerance.org/sep_c_st4.htm)

invocations. But it is not permissible to mention a specific God or religion by name. So one can appeal for the protection of "God" in the generic sense. But one is not permitted to mention the name of Allah, Diana, Jehovah, Jesus, Krishna, or any of the thousands of other Gods, Goddesses and God-men who have been worshiped by followers of different religions. This would seem to violate the third principle listed above: the promotion of religion above secularism. But it appears that the courts and legislative bodies do not consider this to have a significantly serious impact to warrant being declared unconstitutional. Perhaps in the future, when the percentage of American adults who do not believe in the existence of a supreme deity increases, this point will become more critical.

The First Amendment "*giveth*," because it guarantees almost uninhibited personal religious freedom. But the First Amendment also "*taketh away*:" It requires governments, including municipalities and Boards of Education, to remain religiously neutral; they may not promote either a religious or a secular way of life.

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### **1983 decision by the U.S. Supreme Court:**

Apparently, none of the many religion cases decided by the U.S. Supreme Court involved prayer at a meeting of a municipal council. Only one case refers to a legislative body: *Marsh v. Chambers*, 463 U.S. 783 (1983). The court decided that the *Nebraska Legislature* did not violate the *Establishment Clause* by hiring a chaplain to lead a daily prayer. The court ruling concluded that: "*The content of the prayer is not of concern to judges where, as here, 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. That being so, it is not for us to embark on a sensitive evaluation or to parse the content of a particular prayer.*" The Supreme Court noted in a footnote to its ruling that the chaplain of the *Nebraska Legislature* had ceased mentioning Jesus during his prayer after having received a complaint from a Jewish legislator.

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### **1999: Prayers at the Burbank, CA, municipal council meetings:**

The laws that govern prayers before municipal council meetings also govern prayers at [public school graduations](#), [public school sports events](#), etc. Perhaps the closest comparison to a council invocation would be prayers before *Board of Education* meetings. In 1999, the 6th U.S. Circuit Court of appeals ruled that the Board of Education in Cleveland, OH, cannot pray before their meetings. They ruled that prayers are an illegal endorsement of religion. <sup>1</sup>

Since 1953, Burbank council meetings have been opened with an invocation, usually delivered by a member of the *Burbank Ministerial Association*. The group is mostly Christian, and has no members from Baha'i faith, Buddhism, Hinduism, or Islam. In 1999-NOV, Irv Rubin, the late leader of the *Jewish Defense League*, joined a number of other plaintiffs to launch a lawsuit against the *City of Burbank, CA*.<sup>2</sup> He was distressed to hear a member of the Mormon church say during an invocation before a municipal meeting: "*We are grateful heavenly Father for all that thou has poured out on us and we express our gratitude and our love in the name of Jesus Christ.*"<sup>3</sup> The *Superior Court of Los Angeles* ruled that sectarian invocations of this type violated the [principle of separation of church and state](#).

In 2002-SEP-9, *Division Two* of the *Court of Appeal* upheld the ruling.<sup>4</sup> Judge Doi Todd wrote: "*In light of the fact that the legislative invocation given at the Burbank City Council meeting took place on government property, was authorized by the long standing policy of the city council, was part of the official agenda of the council meeting, and was for the purpose of calling for spiritual assistance in the work of the legislative body, we are satisfied that it was not 'private speech.'* ...[A]n objective observer familiar with the City's policy and implementation would likely perceive that the invocation carried the City's seal of approval. As such those who provide legislative invocations at the Burbank City Council meetings are subject to the requirement that the prayers should comport with the First Amendment." Amicus Curia briefs supporting the invocation were filed by Fundamentalist Christian group, the *American Center for Law and Justice* and by 34 other California cities. The *Council for Secular Humanism's* brief opposed the invocation.

Roger Diamond, attorney for the plaintiffs, shouted "*praise the Lord!*" when interviewed by a Reuters reporter. He said that his clients were not "anti-religion." However, they believed that prayer belonged in churches, temples and mosques and not in government. He said that the invocation cited in the court case "*...went overboard.... This was a prayer in the name of Jesus. That's what crossed the line.... Jesus complained (in the Bible 5) about people praying in public when its really meant to be a private activity. I believe, as Jesus said, that politicians do this because they are hypocrites and they want to create the impression that what they are doing is infallible.*"<sup>6</sup>

Mayor David Laurell said: "*I think we need to take this ruling to the highest court of the land. It has already had statewide impact and could have nationwide impact.*" In response to the court ruling, at least five Orange County cities - Buena Park, Fullerton, Laguna Niguel, La Palma, and San Clemente have modified their policies concerning invocations.

Pastor Ron Sukut of *Cornerstone Community Church* in San Clemente refused to give an invocation at the council meeting of 2003-JAN-8 because he was told that he could not mention Jesus by name. He said: "*This is indicative of how confused we are,*

*spiritually speaking, about what God is. I think we have a constitutional right to choose which God we're praying to. Taking that right away is what's unconstitutional.... I'm all for invocations that are all-inclusive, but I don't want me or anybody else to tell people that it has to be that way."*

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### **2001-2005: Prayers at the Great Falls, SC town council meetings:**

According to *HeraldOnline*: "*Darla Kaye Wynne, a [Wiccan](#) high priestess, sued the town [in 2001] after its leaders refused to open meetings only with nonsectarian prayers or to allow members of different faiths to lead the prayers. Wynne claimed she was ostracized for refusing to stand and bow her head during the Christian prayers."*

She won at the U.S. District Court, in front of a three-judge panel of the *4th U.S. Circuit Court of Appeals*, and at the full Court of Appeals. *The U.S. Supreme Court* refused to review the case. This left stand the Court of Appeals' ruling. The town council had its own legal costs covered by an insurance policy. However, they now have to dig up \$40,000 to cover Wynne's legal fees. She claims that she has been subjected to harassment, vandalism and violence since the case began. [More info.](#)

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### **2004-JUL-29: Half of Tampa FL city council walks out of meeting:**

The Tampa city council has had a long tradition of having Christian ministers and an occasional Jewish rabbi deliver an invocation before the start of each meeting. Ed Golly, chairperson of *Atheists of Florida* offered to have someone from his group take a turn saying the invocation. Councilman John Dingfelder agreed. He later said that people of different beliefs, or lack thereof, deserve a chance to give an invocation without censorship. He said "*I thank God every day that I live in a country that accepts everybody.*" The Atheist group had selected Michael R. Harvey to say the invocation. Councilman Kevin White tried to deny him an opportunity to speak, saying: "*We have never had people of an Atheist group represent Americans and I don't think it is appropriate in this setting.*" He called for a vote to either find a different person to pray, or to bypass the invocation for this meeting. Different sources say that there was either one or two votes in favor; the vote would have had to be unanimous in order to take effect. White then walked out of the meeting, along with fellow council members Mary Alvarez and Rose Ferlita. The *Tampa Tribune* reported that Harvey spoke to the council, saying that his group supports the separation of church and state. He asked the board to seek inspiration from history, science and logic. The *THIS is TRUE* mailing list commented: "*Alvarez had previously gone on record that she 'looked forward' to hearing the atheist's invocation. 'It's a free country, she said then. Alvarez was the only one to support White's censorship*

*attempt, but they were overruled by other council members.... Who better understand what living in 'a free country' really means." 7,8*

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## 2005-FEB: Chesterfield County, VA, rejects Wiccan priestess:

Cynthia Simpson, a Wiccan priestess, was informed that she could not lead the opening prayer at a Chesterfield County Board of Supervisors meeting. The county asserted that her beliefs as a Wiccan were not consistent with the Judeo-Christian tradition. A trial judge ruled that it was unconstitutional to deny her the chance to deliver the invocation. The county has appealed the decision.

Simpson said that she was excluded because of a lack of understanding. She said: *"People just don't know about... [Wicca] and there has definitely been a misrepresentation of Witchcraft... I understand all that ignorance and confusion."* She plans to appeal the decision of the appeals court if it does not rule in her favor.

*8 News* referred to Simpson as *"a self-proclaimed witch."* We have found no evidence of the media outlet referring to Christians, Jews, Muslims etc. as *"self-proclaimed."* [9 More info.](#)

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## Methods by which municipalities can still have invocations:

Two novel techniques by which a municipal council *might* be legally able to listen to a sectarian invocation have been suggested. Neither has been tested in the courts, but both may well prove to be constitutional:

- Many municipal governments set aside time on their meeting agendas during which individual members of the public can address the council on any subject. Often a defined interval is specified -- perhaps three minutes. Debbie Borden, a resident of Huntington Beach, AC, suggested that a member of the public could give an invocation during this free time. She said: *"It's very important that the leaders of our city can turn to a higher power. The separation of church and state is to protect religions from the government, not the other way around."* The First Amendment would presumably guarantee the person freedom of speech, and would allow them to give an invocation with any religious content.
- A council might schedule a time for an invocation at each meeting, and then select an individual to deliver it from a representative sampling of religious and secular groups which are active in their area. For example, they could invite, in sequence, a [Roman Catholic priest](#), a member of American [Atheists](#), a Southern Baptist pastor, a [Humanist](#), a [Wiccan](#) priestess, a member of the local Ethical Culture society, and

so on. By taking this approach, the municipality:

- Would avoid recognizing one religious faith as more valid than any other faith or secularism.
- Would not promote religion above secularism.
- Would not promote secularism above religion.

However, it is doubtful that this approach would be acceptable to most religious and secular groups in most municipalities.