

ORDINANCE NO. F-1475

**AN ORDINANCE AMENDING SECTION 2-51 AND ADDING A NEW SECTION 2-74
TO CHAPTER 2 DIVISION 2 "RULES OF PROCEDURE" OF THE WHEATON CITY
CODE (INVOCATIONS)**

WHEREAS, the Wheaton City Council "The Council" is an elected legislative and deliberative public body, serving the citizens of Wheaton, Illinois; and

WHEREAS, the City has recently received correspondence questioning the City Council's use of invocations to open City Council meetings; and

WHEREAS, the Wheaton City Council seeks to adopt formal written procedures and policies related to opening invocations before meetings of the Wheaton City Council and that are not inconsistent with the Establishment Clause of the First Amendment of the Constitution of the United States of America; and

WHEREAS, to accomplish said goals, the Wheaton City Council deems it necessary and appropriate to amend Section 2-51, Order of Business, Division 2. Rules of Procedure, Section 2.51 Order of Business and add a new Section 2-74 "Policy Regarding Opening Invocations Before Meetings of the Wheaton City Council," to the Wheaton City Code.

WHEREAS, with regard to the policy regarding opening City Council meetings with invocations, the Wheaton City Council makes the following statement of policy:

- A. The Wheaton City Council ("The Council") is an elected legislative and deliberative public body serving the citizens of Wheaton, Illinois; and
- B. 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 in respect to the long historical tradition of legislative invocations in the United States; and
- C. The Council desires to formalize adoption its invocation practices; and
- D. Our country's founders recognized that we possess certain rights that cannot be awarded, surrendered, or corrupted by human

power and the founders specifically attributed the origin of these, “inalienable rights,” to a creator.

- E. These rights ultimately insure the self-government manifest in the Council, and upon which it desires to invoke divine guidance and blessings; and
- F. Such prayer before deliberative public bodies has consistently been upheld as constitutional by the American courts, including the Supreme Court of the United States; and
- G. 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 the sessions of legislative and other deliberative public bodies with prayer is deeply imbedded in the history and tradition of this country. From colonial times to the founding of the republic and ever since, the practice of legislative prayer has co-existed with the principles of disestablishment and religious freedom.” ID at 786; and
- H. 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 uncommon in these circumstances, and is not establishment” of religion or a step towards establishment; it is simply a tolerable acknowledgement of beliefs widely held among the people of this country”. ID at 786; and
- I. The Supreme Court affirmed in Lynch v. Donnelly, 465 U.S. 668 (1984), that “our history is replete with official references to the value of and invocation of divine guidance in the deliberations and pronouncements of the founding fathers and contemporary leaders.” ID at 675; and
- J. The Supreme Court further stated that “government acknowledgements of religions serve, in only the 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

- K. The Supreme Court also observed in Zorach v. Clauson 343 U.S. 306 (1982), “we are a religious people whose institutions presuppose a supreme being.” ID at 313-314; and
- L. The Supreme Court acknowledged in Holy Trinity Church vs. the 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
- M. 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 disparage any other, faith or belief.” Marsh ID 463 U.S. at 794-795; and
- N. The Supreme Court has also proclaimed that it should not be the job of the courts or deliberative bodies to “embark on sensitive evaluation or to parse the content of a particular prayer” offered before a deliberative body; Marsh ID at 795; and
- O. The Supreme Court has counseled against the efforts of government officials to affirmatively screen, censor and/or prescribe a specific content of public prayers offered by private speakers, as such government efforts would violate the First Amendment rights of those speakers. Lee v. Weisman 507 U.S. 577 at 588-589 (1982); and
- P. The Council intends and has intended in past practice to adopt a policy that does not proselytize or advance any faith, or show any personal preference of one religious view to the exclusion of others;
- Q. The Council recognizes its constitutional duties to interpret, construe and amend its policies and ordinances to comply with constitutional requirements as they are now; and
- R. The Council accepts as binding the applicability of general principles of law and all the rights and obligations afforded under the United States and Illinois constitutions and statutes.

NOW, THEREFORE BE IT ORDANED, by the Corporate Authorities of the City of Wheaton DuPage County, Illinois as follows:

SECTION 1: That Section 2-51 "Order of Business, Division 2, Rules Of Procedure of Chapter 2 of the Wheaton City Code" is hereby repealed and rescinded in its entirety and replaced with a new **Section 2-51 to be entitled "Order Of Business"** which shall read as follows:

"Sec. 2-51. Order of business.

The order of business at all regular meetings of the city council shall be as follows:

Invocation and ceremonies.

AGENDA

- (1) Call to order by presiding officer.
- (2) Roll call.
- (3) Report of city manager.
- (4) Report of city attorney.
- (5) Citizens to be heard.
- (6) Consent agenda.
 - a. Approval of minutes of previous meeting.
 - b. Unfinished business.
 - c. New business.
- (7) Unfinished business.
- (8) New business.
- (9) Council comment.
- (10) Approval of bills. "

(11) Adjournment.”

SECTION 2: That Division 2, “Rules of Procedure” of Chapter 2 “Administration” of the Wheaton City Code is hereby amended by the addition of a new section 2-74 to be entitled “**Ordinance Regarding Opening Invocations Before Meetings**” which shall read as follows:

“Section 2-74: Ordinance Regarding Opening Invocations Before Meetings

- A. In order to solemnize proceedings of the Council, it is the policy of the Council to allow for an invocation to be offered before its meetings for the benefit of the Council.
- B. The prayer shall not be listed or recognized as an agenda item for the meeting before the call to order or as part of the public business.
- C. 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.
- D. An invocation shall be voluntarily delivered by an eligible member of the clergy as specified below. To ensure that such person (“invocation speaker”) is selected from a wide pool of local clergy on a rotating basis, the invocation speaker shall be selected according to the following procedure:
 - 1. The City Clerk (“Clerk”) shall compile and maintain a database (the “congregations list”) of the religious congregations with an established presence in the local community of Wheaton.
 - 2. The congregations list shall be compiled by referencing the listing for “churches, congregations, synagogues, mosques or temples,” or other religious assemblies in the annual Yellow and White Pages phone books published for the City of Wheaton, researched from the Internet, and in consultation with local Chambers of Commerce. All religious congregations with an established presence in the local community of Wheaton are eligible to be, and shall be, included in the congregations list. Any such congregation not otherwise identified for participation may request its inclusion by written communications to the Clerk.
 - 3. This policy is intended to be and shall be applied in a way that is all-inclusive of every diverse religious congregation in Wheaton. The

Congregations list is compiled and used for purposes of logistics, efficiency and equal opportunity for all of the community's religious groups, who may themselves choose whether to respond to the Council's invitation and participate. Should a question as to the authenticity of a religious congregation, the Clerk shall refer to the 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 or which are registered with the Illinois Secretary of State as religious corporations.

4. 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 Wheaton.

5. The congregations list shall also include the name and contact information of any religious congregation located outside the City of Wheaton, if such religious congregation is regularly attended by a resident or residents of Wheaton and such residents request the inclusion of said religious congregation by written communication to the Clerk.

6. The congregations list shall be updated by reasonable efforts of the Clerk on or about the month of December of each calendar year.

7. Within 30 days of the effective date of this policy, and on or about December 1st 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 chaplain included on the congregations list.

8. The invitation shall be dated at the top of the page signed by the Clerk at the bottom of the page, and shall read as follows:

Dear Religious Leader,

The Wheaton City Council makes it a policy to invite members of the Clergy in Wheaton and other identified by residents of Wheaton who are regular attendees at a religious congregation outside the City of Wheaton, to voluntarily offer an invocation before the beginning of its meetings, for the benefit and blessings 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, or as a religious leader of one

or more Wheaton residents' religious congregations, you are eligible to offer this important service in an up-coming meeting of Council.

If you are willing to assist the Council in this regard, please send a written reply at your earliest convenience to the Council's secretary 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 up-coming year are listed on the attached page. If you have a preference on the dates, please state the request on 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 a 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 Wheaton Council, I thank you in advance for considering this invitation.

Sincerely,

City Clerk

9. The respondents to the invitation shall be scheduled on a first come first served basis, unless requesting a specific date. There shall be only one invocation speaker per meeting.

10. No invocation speaker shall receive compensation for his or her service.

11. The clerk shall make every reasonable effort to ensure that a variety of eligible invocation speakers are scheduled for Council meetings. In any event, no invocation speaker shall be scheduled to offer a prayer at consecutive meetings of the Council, or at more than three Council meetings in any calendar year.

12. Neither the Council nor the Clerk shall engage in any prior inquiry, review of, or involvement in, the content of any prayer to be offered by an invocation speaker.

13. Invocations shall be provided before the opening gavel that officially begins the meeting and the agenda/business of the public. The mayor shall introduce the invocation speaker and the person selected to lead the Pledge of Allegiance following the invocation, and invite only those who wish to do so to stand for observance of the invocation and for the Council. No person shall be required to stand for an invocation.

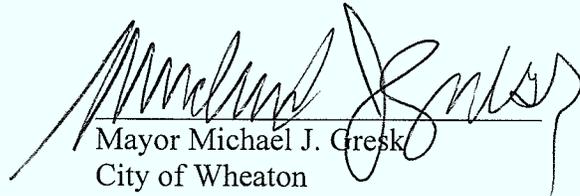
14. This policy is not intended, and shall not be implemented or construed in any way, to affiliate the Council with, nor express the Council's preference for or against, any faith, religious domination or sect. Rather, this policy is intended to acknowledge and express the Council's respect for the diversity of the religious denominations and faiths represented amongst the citizens of Wheaton.

15. A disclaimer shall be included in at least 10 point font at the bottom of any printed Council meeting agenda which states, "Any invocation that may be offered before the official start of 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 previously been reviewed or approved by the Council, or any employee of the City of Wheaton, and the Council is not allowed by law, and does not endorse the religious beliefs of the invocation speaker or any other speaker."

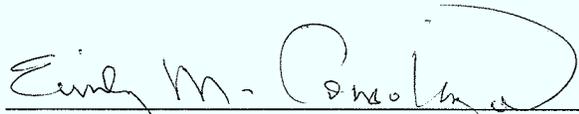
SECTION 3: If a court of competent jurisdiction sets aside any portion of this Ordinance as unconstitutional it shall not affect the validity of the remainder of the Ordinance.

SECTION 4: Any ordinance which is inconsistent with this Ordinance is repealed to the extent of such inconsistency.

SECTION 5: This Ordinance shall become effective upon passage, execution by the Mayor and publication as required by law.


Mayor Michael J. Gresk
City of Wheaton

ATTEST:



Emily M. Consolazio, City Clerk
City of Wheaton

AYES: Councilman Suess, Councilwoman Corry, Councilman Levine, Councilman Mouhelis,
Mayor Gresk, Councilman Prendiville, Councilman Scalzo

NAYS: None.

ABSENT: None.

Motion Carried Unanimously

PASSED AND APPROVED THIS 1st DAY OF March, 2010.

PUBLISHED THIS 2nd DAY OF March, 2010.

