

**STAFF REPORT**  
City of Lancaster, California

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08/25/09
MVB

Date: August 25, 2009  
To: Mayor Parris and City Council Members  
From: David McEwen, City Attorney  
Subject: **Policy regarding invocations at meetings of the City Council of the City of Lancaster**

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**Recommendation:**

Approve policy regarding invocations at meetings of the City Council of the City of Lancaster.

**Fiscal Impact:**

Some staff time in the City Clerk Department and nominal costs for mailings.

**Background:**

The U.S. Supreme Court in *Marsh v. Chambers*, 463 U.S. 783 (1983) observed:

“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.

The Court held that so long as there is no evidence “that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other faith or belief ... it is not for us to embark on a sensitive evaluation or to prove the context of a particular prayer. “*Marsh v. Chambers*,” 463 U.S. 783 at 794-95.

A footnote in the *Marsh* opinion that observed that the Chaplain characterized his prayers as nonsectarian and while earlier prayers were often explicitly Christian, he had removed all references to Christ, has caused a number of courts to conclude that that fact was critical to the conclusion reached by the Court. Based in large part, on this misunderstanding of *Marsh*, courts have focused on the context of individual prayers rather than reviewing the overall prayer opportunity to determine if the opportunity is being exploited to proselytize or advance one religion or disparage another. It is clear from subsequent federal cases that the proper focus is on the prayer opportunity as a whole and not individual prayers.

In *Pelphrey v. Cobb County*, 547 F.3d 1263 (2008), the Court upheld a practice in which the County Commission maintained a master list of clergy and selected on a random basis the speaker to deliver the invocation at board meetings. The list was developed from responses to invitations mailed to religious organizations listed in the yellow pages and on the internet, and local law enforcement or fire departments. In doing so, the Court rejected the plaintiff's argument that based on the footnote discussed above, *Marsh* required nonsectarian prayer. The Court stated:

“To read *Marsh* as allowing only nonsectarian prayers is at odds with the clear directive by the Court that the content of a legislative 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 ... faith or belief.” Id. at 794-95.”

The proposed policy follows the guidelines upheld in *Pelphrey* and requires the compilation of a list of clergy and provides for the random selection of an individual speaker to deliver the invocation at meetings of the City Council. Consistent with the holding of the U.S. Supreme Court in *Lee v. Weissman*, 505 U.S. 577 (1992), the policy does not suggest or require a particular content of the prayer, nor does it limit what the speaker may say. The invitation letter will specifically provide:

“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 City Council 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.”

**Attachment:**

Policy regarding Invocations