KENAI PENINSULA BOROUGH
RESOLUTION 2023-075

A RESOLUTION AMENDING THE ASSEMBLY INVOCATION POLICY TO PROVIDE THAT INVOCATIONS WILL BE GIVEN BY CHAPLAINS

WHEREAS, the Kenai Peninsula Borough Assembly ("Assembly") is an elected legislative and deliberative public body, serving the residents of the Borough; and

WHEREAS, the Borough Code of Ordinances provides for an invocation to be offered at the beginning of each meeting for the benefit of the Assembly to accommodate the spiritual needs of the public officials; and

WHEREAS, in Resolution 2016-056 the Assembly adopted a formal written policy to clarify its invocation practices; and

WHEREAS, in *Marsh v. Chambers,* 463 U.S. 783 (1983), the United States Supreme Court validated 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."; and

WHEREAS, in *Town of Greece v. Galloway*, 134 S.Ct. 1811 (2014), the United States Supreme Court validated opening prayers at town council meetings finding that "legislative prayer lends gravity to public business, reminds lawmakers to transcend petty differences in pursuit of a higher purpose, and express a common aspiration to a just and peaceful society."; and

WHEREAS, the Supreme Court clarified in *Town of Greece* that opening invocations are "meant to lend gravity to the occasion and reflect values long part of the Nation's heritage" and should not show over time "that the invocations denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion."; and

WHEREAS, the Merriam-Webster dictionary defines an invocation as the act or process of asking for help or support, in this case, for the Assembly and Borough; and

WHEREAS, over recent years drawn-out, politically and religiously motivated speeches have become more frequent than true invocations; and

WHEREAS, these speeches seldom ask for any help or support for the Assembly, the decision making process, or the Borough; and

WHEREAS, the Assembly believes a chaplain could more precisely execute a timely invocation specifically asking for help and support for the Assembly and Borough while remaining politically neutral and neutral with regard to religious affiliations; and

WHEREAS, the assembly desires to amend the formal, written policy to clarify its invocation definition and intended practices; and

WHEREAS, this resolution does not establish a policy that defines the constitutional limits for permissible public invocations but instead is intended to adopt guidelines that are consistent with the guidance provided by several courts that have considered the validity of public invocations; and

WHEREAS, the Assembly intends to adopt a policy that does not advance any particular faith, or show a purposeful preference of one religious view over another by not permitting the faith of the person offering the invocation to be considered;

WHEREAS, one or more legislative bodies of 46 states and Puerto Rico have invocations delivered by a chaplain; and

WHEREAS, using a chaplain to offer the invocation during the beginning of a legislative session was upheld by the U.S. Supreme Court in *Marsh v. Chambers*, 463 US 783 (1983), in which the Nebraska legislature opened each day of its sessions with a prayer by a chaplain paid with taxpayer dollars; and

WHEREAS, nothing in the selection of a chaplain will limit the chaplain to any religious belief or affiliation; and

WHEREAS, the Assembly's intent is that the invocation should be non-sectarian, with participation completely voluntary, with the purpose of taking a moment to solemnize the proceedings without proselytizing; and

WHEREAS, volunteer chaplains serving the Borough's emergency and fire service areas are practiced in providing comfort and solace and not proselytizing a specific viewpoint or religious denomination; and

WHEREAS, the Borough Assembly's best interest would be served by asking volunteer emergency services and fire service area chaplains provide a short invocation prior to the meeting;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That Section IX paragraph D of the Kenai Peninsula Borough Assembly Manual is hereby amended as follows:

    IX. ASSEMBLY MEETING

    ...

    D.   Invocations.

        1.   It is the intent of the assembly to allow a private citizen to solemnize the proceedings of the Kenai Peninsula Borough Assembly. It is the policy of the assembly to allow for an invocation, which <u>will be limited to a short prayer or solemnizing message asking for help or support for the Assembly, decision making process, and/or Borough that is no longer than two minutes</u> [MAY INCLUDE A SHORT PRAYER OR A SOLEMNIZING MESSAGE], to be offered at the beginning of its meetings for the benefit of the assembly to accommodate the spiritual needs of the public officials.

        2.   No member or employee of the assembly or any other person in attendance at the meeting shall be required to participate in the invocation that is offered and such decision shall have no impact on the ability of the person to actively participate in the business of the assembly.

        3.   No member or employee of the assembly will direct the public to stand, bow, or in any way participate in the invocation, make public note of a person's presence or absence, attention or inattention during the invocation, or indicate that decisions of the assembly will in any way be influenced by a person's acquiescence in the invocation opportunity.

        4.   The invocation shall be voluntarily delivered by a resident of the Kenai Peninsula Borough <u>who serves as</u> a <u>volunteer chaplain for the Borough's fire and emergency medical service areas designated by the Assembly President</u>.

5.	If a scheduled chaplain is not in attendance at an assembly meeting the Assembly President may authorize an Assembly member or the Mayor to provide the invocation or a moment of silence or reflection. [TO ENSURE THAT THE OPPORTUNITY TO GIVE AN INVOCATION IS AVAILABLE TO A WIDE POOL OF REPRESENTATIVES THE INVOCATION SPEAKER SHALL BE SELECTED ACCORDING TO THE FOLLOWING PROCEDURE:

A.	THE CLERK'S OFFICE SHALL KEEP A CALENDAR FOR ALL DATES OF ASSEMBLY MEETINGS. A PERSON WISHING TO GIVE AN INVOCATION MUST SUBMIT A DATED, WRITTEN REQUEST FOR AN INVOCATION TO THE CLERK'S OFFICE FOR ONLY ONE INVOCATION AT A TIME.

B.	THE POLICY IS INTENDED TO BE APPLIED IN A WAY THAT IS ALL-INCLUSIVE AND DIVERSE TO REPRESENT THE FAITHS OF THE RESIDENTS OF THE KENAI PENINSULA BOROUGH. SHOULD A QUESTION ARISE AS TO THE QUALIFICATION OF A PERSON REQUESTING TO GIVE AN INVOCATION, THE ASSEMBLY PRESIDENT SHALL MAKE THE DECISION BY REFERRING TO THIS POLICY, AND MAY REQUEST CLARIFICATION FROM THE APPLICANT IF NEEDED.

C.	THE RESPONDENTS TO THE NOTICE SHALL BE SCHEDULED ON A FIRST-COME, FIRST-SERVE BASIS TO DELIVER THE INVOCATION, PROVIDED EACH RESPONDENT MAY ONLY ASK TO PROVIDE ONE INVOCATION AT A TIME, WITH SUBSEQUENT REQUESTS ONLY MADE AFTER THE DATE OF PREVIOUSLY SCHEDULED INVOCATION HAS PASSED. IN ANY EVENT, NO RESPONDENT SHALL BE SCHEDULED TO OFFER AN INVOCATION AT CONSECUTIVE ASSEMBLY MEETINGS OR AT MORE THAN FOUR ASSEMBLY MEETINGS IN ANY CALENDAR YEAR. THESE LIMITATIONS ARE INTENDED TO HELP ENSURE THAT A VARIETY OF SPEAKERS ARE GIVEN AN OPPORTUNITY TO PROVIDE AN INVOCATION AND THAT THERE IS NO APPEARANCE THAT THE ASSEMBLY FAVORS OR PROMOTES ANY ONE FAITH OVER ANOTHER.

D.	IN THE EVENT AN ELIGIBLE INDIVIDUAL FROM THE KENAI PENINSULA BOROUGH BELIEVES THAT THE CLERK OR PRESIDENT HAS NOT COMPLIED WITH THE TERMS OF THIS POLICY, THE INDIVIDUAL HAS THE RIGHT TO HAVE THE MATTER REVIEWED BY THE ASSEMBLY.

E.	IF AN INDIVIDUAL SCHEDULED TO OFFER AN INVOCATION IS NOT IN ATTENDANCE AT AN ASSEMBLY MEETING WHEN THE INVOCATION IS SCHEDULED TO BE GIVEN, THE ASSEMBLY PRESIDENT OR AN ASSEMBLY MEMBER MAY BE ASKED BY THE PRESIDENT TO PROVIDE THE INVOCATION OR THE MEETING MAY PROCEED WITHOUT AN INVOCATION BEING OFFERED.]

6.   No invocation speaker shall receive <u>direct</u> compensation for his or her service.

7.   No guidelines or limitations shall be issued regarding an invocation's content, except that the Assembly shall request by the language of this policy that no invocation should proselytize or advance any faith, or disparage the religious faith or non-religious views of others.

8.   No assembly member nor employee in the clerk's office shall engage in any prior inquiry, review of, or involvement in the content of any invocation to be offered by an invocation speaker.

9.   To clarify the assembly's intentions the following disclaimer shall be included on any printed assembly meeting agenda for a meeting during which an invocation may be provided immediately below the invocation:

        "Any invocation that may be offered at the beginning of the assembly meeting shall be a voluntary offering of a private person, to and for the benefit of the assembly. No member of the community is required to attend or participate in the invocation."

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

SECTION 2. This resolution shall become effective on January 1, 2024.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 7TH DAY OF NOVEMBER, 2023.

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Brent Johnson, Assembly President

ATTEST:

_____
Michele Turner, CMC, Borough Clerk

Yes: Cooper, Cox, Ecklund, Elam, Hibbert, Ribbens, Tunseth, Tupper, Johnson

No: None

Absent: None