

KENAI PENINSULA BOROUGH

Kenai Peninsula Borough Assembly

144 North Binkley Street
Soldotna, AK 99669
Phone 907-714-2160
Fax 907-714-2388

Blaine Gilman, Assembly President
Brent Johnson, Vice President

MEMORANDUM

TO: Blaine Gilman, Assembly President
Kenai Peninsula Borough Assembly Members

FROM: Blaine Gilman, Assembly President *(B) for B. Gilman*

DATE: June 9, 2016

RE: Ordinance 2016-26, An Ordinance Amending KPB 22.40.080 and Repealing KPB 22.40.090 Which Provides for an Invocation During Assembly Meetings (Gilman)

Separation of church and state are well-recognized constitutional principles in the United States. Both the United States Constitution and the Constitution of Alaska prohibit the passage of any law "respecting an establishment of religion, or prohibiting the free exercise thereof." Interpretation of these principles has been the subject of many lawsuits throughout the country, including challenges to invocations held by local governing bodies during their meetings. Issues raised in such lawsuits have included whether or not the government may restrict the content of invitational prayers, if so to what extent, whether invoking the name of a certain deity is unconstitutional, whether or not the selection of those who offer prayers may be limited and if so to what extent, whether it is made sufficiently clear that people are not required to participate, and many other issues.

In 2014, the U.S. Supreme Court reaffirmed the legality of invocations in a decision concerning a city in upstate New York. It found that town's invocation practices were consistent with historical practices dating back to the first Congressional invocations. In addressing concerns about limiting the content of invitational prayers, the court stated "Once it invites prayer into the public sphere, government must permit a prayer giver to address his or her own God or gods as conscience dictates, unfettered by what an administrator or judge considers to be nonsectarian." The court explained this did not prevent the government from imposing any restraints whatsoever on content, but it could not advance one belief over others. Additionally the court upheld the town's practice of making invocations available to ministers or lay people. However, the court was clear that its decision was based on fact intensive determinations, leaving much open to debate.

A number of local residents have expressed serious discomfort with the assembly invocation. It is important that the assembly does what it reasonably can to help all residents feel welcome at assembly meetings. Additionally, if the invocation practice continues the assembly will have to develop policies and procedures to attempt to comply with legal requirements.

The assembly is not required to hold invocations in its meetings and continuing to hold them will continue to upset some constituents and may eventually result in litigation. In my view, the best approach is to discontinue this practice. It is not necessary and may cause division in our community.