Introduced by:	Gilman, Bagley
Date:	10/11/16
Action:	Adopted
Vote:	6 Yes, 3 No, 0 Absent
Date:	10/25/16
Action:	Adoption Vetoed by Mayor
Action	Motion to Override Veto Passed
Vote on Override:	6 Yes, 3 No, 0 Absent

KENAI PENINSULA BOROUGH
RESOLUTION 2016-056

AMENDING THE ASSEMBLY MANUAL TO INCLUDE A POLICY REGARDING INVOCATIONS BEFORE BOROUGH ASSEMBLY MEETINGS

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; and

WHEREAS, the assembly desires to adopt 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 (May 5, 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, 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, numerous courts have approved an invocation practice that incorporates a neutral system to invite religious leaders from the local community and/or volunteers to provide an invocation before public meetings. *Town of Greece. See also Simpson v. Chesterfield Cnty. Bd. Of Supervisors,* 404 F.3d 276 (4th Cir. 2005), *cert. denied,* 546 U.S. 937 (2005); *Pelphrey v. Cobb Cnty.,* 547 F.3d 1263 (11th Cir. 2008); *Rubin v. City of Lancaster,* 710 F.3d 1087 (9th Cir. 2013); and

WHEREAS, the assembly intends to adopt a policy that does not proselytize or 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 when extending an invitation or scheduling participation;

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

SECTION 1. That Section IX of the Kenai Peninsula Borough Assembly Manual is hereby amended by adding a new paragraph D which adopts a written policy regarding opening invocations 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 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 any prayer or solemnizing message 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 prayers, 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 prayer opportunity.

4. The invocation shall be voluntarily delivered by an appointed representative from the Associations List developed as described below. To ensure that such person (the "invocation speaker") is selected from among a wide pool of representatives the invocation speaker shall be selected according to the following procedure:
   a. The Clerk shall post a notice on the borough internet home page that all religious associations with an established presence in the Kenai Peninsula Borough that regularly meet for the primary purpose of sharing a religious perspective, or chaplains who may serve one of more of the fire departments, law enforcement agencies, hospitals, or other similar organizations in the borough, are eligible to provide invocations to the assembly, and that the authorized leader of any such association or chaplain can submit a written request to provide an invocation to the borough clerk. An additional printed notice containing this information shall be made available to the public during assembly meetings and at the clerk's office.
   b. The borough clerk shall compile and maintain a database (the "Associations List") of the qualifying associations and chaplains who have submitted such a written request (hereinafter referred to as a "religious association").
   c. The policy is intended to be and shall be applied in a way that is all-inclusive of every diverse religious association serving the residents of the Kenai Peninsula Borough. The Association List is compiled and used for purposes of logistics, efficiency, and equal opportunity for all of the community's religious leaders, who may themselves choose whether to respond to the assembly's invitation and participate. Should a question arise as to the authenticity of

a religious association, the assembly president shall make the decision by referring to the criteria used by the Internal Revenue Service in its determination of those organizations that would legitimately qualify for I.R.C. §501(c)(3) tax-exempt status.

d. 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. This is intended to help ensure that a variety of eligible representatives are scheduled for the invocations.

e. In the event an eligible representative of a religious association serving the local community believes that the Clerk or President has not complied with the terms of this policy, the representative has the right to have the matter reviewed by the Assembly.

f. If no scheduled representative is in attendance at an assembly meeting the assembly President may authorize an assembly member to provide the invocation.

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

6. 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.

7. 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.

8. 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."

9. 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. That this resolution takes effect immediately upon its enactment.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 11TH DAY OF OCTOBER, 2016.

Blaine Gilman, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

10/11/16 Vote on motion to adopt:

Yes:	Bagley, Johnson, Knopp, Ogle, Welles, Gilman
No:	Cooper, Dunne, Holmdahl
Absent:	None

10/25/16 Vote on motion to override Mayor's Veto:

Yes:	Bagley, Fischer, Gilman, Knopp, Ogle, Welles
No:	Dunne, Holmdahl, Cooper
Absent:	None