

CITY OF YAKIMA

LEGAL

DEPARTMENT

200 South Third Street, Yakima, Washington 98901

(509)575-6030 Fax (509)575-6160

MEMORANDUM

January 27, 2011

TO: Honorable Mayor and City Council
Michael Morales, Acting City Manager

FROM: Mark Kunkler, Senior Assistant City Attorney

SUBJECT: Council Invocations – Rules and Procedures Committee
Recommendations

On January 12, 2011 the City Council Rules and Procedures Committee met to discuss options regarding City Council invocations. After discussion, the Committee recommended that the full Council consider three options, stated below in order of preference.

Option 1. Retain Traditional Invocation with Modifications. The first preference was to retain the current traditional practice with certain modifications. The suggested modifications include:

- (a) Adding a statement to the Agenda advising that participation in the invocation is purely voluntary.
- (b) Reserving the right of the City Council to invite members of the local clergy to give the invocation on special occasions as scheduled by the City Council.

Option 2. Open the Invocation to Members of the Clergy in the Community. This option includes adoption of a policy changing the format from invocations offered by Council members, to extending an invitation to leaders of religious congregations with an established presence in the community to give the invocation. Typically, in this format, an invitation is sent out once per year to many religious congregations with a request that, if any clergy member desires to give an invocation, please contact the City Clerk. Invocation speakers are then scheduled on a first-come, first serve basis. In this format, the City Clerk typically has recourse to community listings of religious congregations in the community. These lists can be drawn from the Yellow Pages,

information and publications of the Chamber of Commerce, internet listings, pastoral associations and other sources. The intent is that the "invitation" be mailed to a broad pool of religious congregations.

Option 3. Retain Invocations by Council Members, But Use Nondenominational Prayers. This third option was included as a possible alternative, but without the stronger recommendations given to Option 1 and Option 2, respectively. It was felt that this option does not reflect the community values as closely as the first two options.

CONCLUSIONS: In light of the above, I would ask that the issue be scheduled for presentation to and discussion by the full Council February 1, 2011.

Second, upon Council selection of any option, I recommend that a Council Policy be drafted for Council review and adoption on February 15, 2011.

Third, if Option 1 is selected, it will be necessary to draft the appropriate language to place on the Agenda. It may also be the desire of Council to revise the Agenda to place the Invocation so that it occurs prior to gaveling the meeting to order. Both of these items can be included and explained in the formally adopted Policy.

**POLICY OF THE CITY COUNCIL
CITY OF YAKIMA
CITY COUNCIL INVOCATIONS**

DRAFT

WHEREAS, the City Council of the City of Yakima is an elected legislative and deliberative public body, serving the citizens of the City of Yakima; and

WHEREAS, the City Council has an established tradition of solemnizing its proceedings by allowing for an opening prayer before each meeting for the benefit and blessing of the City Council; and

WHEREAS, the City Council desires to adopt this policy regarding its invocation practices; and

WHEREAS, our country's Founders recognized that we the people are endowed with certain unalienable rights as stated in the Declaration of Independence:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness;

and

WHEREAS, these rights cannot be awarded, surrendered, nor corrupted by human power, and are vested in us by our Creator. These rights are promoted, protected and served through our forms of self-government, including our legislatures and local governments, and it is the desire of the City Council to invoke divine guidance and blessing upon the City Council, its deliberations and proceedings; and

WHEREAS, such prayer before legislative and deliberative bodies has been consistently upheld as constitutional by our courts, including the United States Supreme Court; and

WHEREAS, in *Marsh v. Chambers*, 463 U.S. 783 (1983), the United States Supreme Court upheld 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, the invocations practiced by the City Council serve the secular purposes of solemnizing public occasions, expressing confidence in the future, and encouraging the recognition of what is worthy of appreciation in society; and

WHEREAS, the City Council intends to follow an invocation practice that does not proselytize or advance any particular faith, or show any purposeful preference of one religious view to the exclusion of others; and

WHEREAS, the City Council intends to follow an invocation practice affirming that participation of citizens, attendees at Council meetings, employees, Council members and all others is entirely voluntary, and that any person's decision to not stand, acknowledge or otherwise participate in the invocation shall not affect that person's rights and abilities to fully participate in all aspects of the Council meeting, city services and city government; and

WHEREAS, the City Council intends that the prayer opportunity shall not be exploited as an effort to convert others to a particular faith, nor to disparage any faith or belief different than that of the invocation speaker; and

WHEREAS, the City Council desires to reserve the right to invite leaders of religious congregations with an established presence in the community to provide invocations at Council meetings the City Council may designate from time to time, which list of religious congregations with an established presence in the community may be compiled by the City Clerk from a broad pool of local clergy using any appropriate community source or listing, including but not limited to, those religious congregations listed in local telephone directories, or community information sources such as the Chamber of Commerce publications or consultations, with those responding to such invitation being scheduled on a first-come, first serve rotating basis; and

WHEREAS, neither the City Council nor any employee of the City shall engage in any prior inquiry, review of, or involvement in, the content of any prayer to be offered by an invocation speaker; and

WHEREAS, the City Council finds and determines that invocations offered pursuant to this stated practice will preserve, promote and protect the general health safety and welfare; now, therefore

THE CITY COUNCIL OF THE CITY OF YAKIMA ADOPTS THE FOLLOWING AS ITS POLICY REGARDING CITY COUNCIL INVOCATIONS:

1. It is the practice and policy of the City Council of the City of Yakima to allow Council members to voluntarily give an invocation prayer after Roll Call but prior to the commencement of the official business of all regular Council meetings. The prayer opportunity shall not be exploited as an effort to convert others to a particular faith, nor to disparage any faith or belief different than that of the invocation speaker.
2. Participation of any Council member in the invocation is voluntary. One Council member may give an invocation prior to commencement of the official business of the Council meeting. Each Council member is eligible to give the invocation, but participation of any Council member is voluntary and any Council member choosing not to give an invocation shall not be required to do so.

3. Participation of any person in the invocation is voluntary. No person, including but not limited to Council members, employees, citizens, or any other person attending or viewing the proceedings of the City Council, shall ever be required to participate in the invocation. Any person's decision to not stand, acknowledge or otherwise participate in the invocation shall not affect that person's rights and abilities to fully participate in all aspects of the Council meeting, city services and city government.
4. The City Council reserves the right to invite leaders of religious congregations with an established presence in the community to provide invocations at Council meetings the City Council may designate from time to time, which list of religious congregations with an established presence in the community may be compiled by the City Clerk from a broad pool of local clergy using any appropriate community source or listing, including but not limited to, those religious congregations listed in local telephone directories, or community information sources such as the Chamber of Commerce publications or consultations, with those responding to such invitation being scheduled on a first-come, first serve rotating basis.
5. The City Council reserves the right to adopt and implement further and additional policies supplementing the practices described herein and above.
6. This policy and the preamble and procedures stated herein, together with actions implementing and using such policies and practices, are not intended, and shall not be implemented or construed in any way, to affiliate the City Council with, nor express the City Council's preference for, any faith or religious denomination. Rather, this policy and the procedures herein are intended to acknowledge and express the City Council's respect for the diversity of religious denominations and faiths represented and practiced among the citizens of Yakima.
7. A written statement corresponding to this policy shall be added to the Yakima City Council Agenda at the Agenda Item listed for invocation. The statement shall read:

The Invocation is for the benefit of the City Council and serves the purposes of solemnizing the proceedings and invoking the wisdom and

blessing of our Creator who has endowed each of us with the unalienable rights of life, liberty and the pursuit of happiness. The invocation is not intended to affiliate the City Council with, or express the City Council's preference for, any faith or religious denomination. Participation is voluntary. Any person's decision to not stand, acknowledge or otherwise participate in the invocation shall not affect that person's rights and abilities to fully participate in all aspects of the Council meeting, city services and city government.

8. This Policy shall become on the date of adoption stated below.

ADOPTED BY THE CITY COUNCIL this ____ day of _____,
2011.

Micah Cawley, Mayor

FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 · MADISON, WI 53701 · (608) 256-8900 · WWW.FFRE.ORG

January 19, 2011

Mark A Kunkler
Senior Assistant City Attorney
City of Yakima
Legal Department
200 South Third St
Yakima WA 98901-2830

COPY

RECEIVED
CITY OF YAKIMA

JAN 25 2011

OFFICE OF CITY COUNCIL

Re: Unconstitutional and Inappropriate Council Invocations

Dear Attorney Kunkler:

This serves as a follow-up letter to our previous request to the Yakima City Council ("Council") urging you to discontinue the inappropriate practice of praying as part of your governmental meetings. The Freedom From Religion Foundation is a 501(c)(3) educational charity that works to educate the public about nontheism, and to safeguard the constitutional principle of the separation between state and church. We wish to draw your attention to the fundamental American tradition of secularism, as well as to refute arguments from theocratic groups that seek to influence legislative bodies across the country to adopt constitutionally problematic prayer policies. It is not in the best interests of the citizens of Yakima for the Council to continue unconstitutional prayer practices. Removing prayer from government meetings is the wisest policy and the only way to alleviate constitutional concerns.

Citizens are frequently compelled to come before you on important civic matters, to seek licenses, permits, to participate in important decisions affecting their livelihood, their property and quality of life, etc. These citizens should not be made to feel offended, excluded and like political outsiders because the local government they support with their taxes oversteps its power by imposing religious ritual at secular government meetings. Local government should not be in the business of performing religious rituals, or exhorting all citizens regardless of beliefs to participate in a Christian prayer, or minimally to demonstrate obeisance to such prayer.

We understand that the Alliance Defense Fund ("ADF") is one organization that regularly pressures government bodies to sponsor Christian invocations. Unfortunately, much propaganda by religious-right groups, such as ADF, is inaccurate, misleading and requires a thorough response.

Sectarian Government Prayers Are Unconstitutional

We understand that ADF routinely claims, "legislative prayers—even sectarian ones—are clearly constitutional" and that in hosting sectarian prayers, "government officials run no risk of violating the Constitution." These claims are also made by other organizations

seeking to institute Christian prayers at government meetings. However, the cases analyzed by courts on this issue tell a different story.

The Supreme Court has said, “The defining principle of Establishment Clause jurisprudence is that the ‘First Amendment mandates government neutrality between religion and religion, and between religion and nonreligion.’” *McCreary County v. ACLU*, 545 U.S. 844, 860 (2005) (quoting *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968)).

As discussed in our previous letter, government-sponsored prayers that do not fit the narrow exception in *Marsh v. Chambers* violate the U.S. Constitution. In *Marsh*, the Supreme Court ruled that a legislative practice confined to a nonsectarian, non-denominational prayer, led by an officiant who had not been selected based upon any impermissible motive, and which was addressed to the body of legislators present and no one else, was permissible. *Marsh v. Chambers*, 463 U.S. 783 (1983).

The Supreme Court’s ruling in *County of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573 (1989), limited *Marsh* in a significant way. The Court said, “not even the ‘unique history’ of legislative prayer, can justify contemporary legislative prayers that have the effect of affiliating the government with any one specific faith or belief.” *Id.* at 603. Significantly, the Court’s limitation in *Allegheny* comes after *Lynch v. Donnelly*, 465 U.S. 668 (1984), upon which ADF relies. Even in *Lynch*, Justice O’Connor’s concurrence merely expresses the permissibility of “legislative prayers of the type approved in *Marsh*.” *Id.* at 693. Justice O’Connor was talking about practices considered to have secular, rather than religious importance. She said, “those practices are not understood as conveying government approval of particular religious beliefs.” *Id.* Here, the Council’s prayer practice does convey government approval for the Christian views expressed in the sectarian prayers.

Courts have ruled against government prayers in a number of cases, either finding outright that they were unconstitutional or affirming the impermissibility of sectarian prayers:

- *Wynne v. Town of Great Falls, S.C.*, 376 F.3d 292 (4th Cir. 2004) (Frequent references to Jesus Christ in prayers at Town Council meetings violated Establishment Clause)
- *Bacus v. Palo Verde Unified School Dist. Bd. of Educ.*, 52 Fed.Appx. 355, 2002 WL 31724273, (9th Cir. 2002) (unpublished) (Prayers offered “in the Name of Jesus” advanced Christianity in violation of the Establishment Clause)
- *Joyner v. Forsyth County, N.C.*, No. 1:07CV243, 2009 WL 3787754, (M.D.N.C., 2009), *appeal docketed*, No. 10-1232 (4th Cir. March 1, 2010) (References to Jesus Christ in prayers prior to Board meetings promoted one religion over others violating Establishment Clause.)
- *Rubin v. City of Burbank*, 101 Cal.App.4th 1194, (Cal. App. 2 Dist., 2002) (City Council prayer ending “in the name of Jesus Christ” violated the Establishment Clause; even when only 20% of prayers had such references, *Marsh* precludes prayers that advance any one religious belief or faith)
- *Doe v. Tangipahoa Parish School Bd.*, 473 F.3d 188 (5th Cir. 2006) (Sectarian prayers before Board meetings violated the Establishment Clause because

observer would affiliate the Board with Christianity) (later dismissed *en banc* for lack of standing)

- *Hinrichs v. Bosma*, 440 F.3d 393 (7th Cir. 2006) (Declined to stay an injunction against opening legislative sessions with prayer, finding that *Marsh* precludes sectarian legislative prayer) (later dismissed for lack of standing)
- *Simpson v. Chesterfield County Bd. of Sup'rs*, 404 F.3d 276 (4th Cir. 2004) (Non-sectarian government prayer policy was constitutional)
- *Turner v. City Council of City of Fredericksburg*, 534 F.3d 352 (4th Cir. 2008) (Policy requiring prayers to be nondenominational did violate council member's First Amendment rights)

These cases demonstrate that repeated sectarian prayers before deliberative bodies are unconstitutional. The analysis of the Fourth Circuit Court of Appeals is telling. In *Wynne*, the Court said:

In *Marsh*, the approved prayer was characterized as "nonsectarian" and "civil"; indeed, the chaplain had affirmatively "removed all references to Christ." Here, on the other hand, the prayers sponsored by the Town Council "frequently" contained references to "Jesus Christ," and thus promoted one religion over all others, dividing the Town's citizens along denominational lines.

376 F.3d at 298-299 (citations omitted).

In letters to some communities, ADF cites *Simpson*, 404 F.3d 276, in support of its claim that prayers invoking Jesus are constitutional. That case affirms, rather than contradicts *Wynne*. The Court said:

Indeed, *Marsh* requires that a divine appeal be wide-ranging, tying its legitimacy to common religious ground... As *Marsh* and other cases recognize, appropriately ecumenical invocations can be "solemnizing occasions" that highlight "beliefs widely held." See, e.g., *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 124 S.Ct. 2301, 2322, 159 L.Ed.2d 98 (2004) (O'Connor, J., concurring in judgment); *Allegheny*, 492 U.S. at 625 (O'Connor, J., concurring in part); *Lynch*, 465 U.S. at 693, 104 S.Ct. 1355 (O'Connor, J., concurring)... [O]ur expressions evoke common and inclusive themes and forswear, as Chesterfield has done, the forbidding character of sectarian invocations.

Simpson, 404 F.3d at 287. Despite ADF's claims to the contrary, federal courts have examined the content of government prayers and ruled that references to Jesus create unconstitutional advancement of one belief.

Limits on Government Prayer Uphold, Rather Than Abridge Individual Rights

Advocates for government-sponsored prayer frequently imply that limits on the prayers of legislative bodies somehow would violate individual rights. These claims have no basis in law or logic.

Under the First Amendment's Free Exercise Clause, *citizens* have a right to the free exercise of religion. Under the First Amendment's Establishment Clause, the *government* has no such right to practice a religion. The Establishment Clause exists precisely to limit government actions relating to religion, to maintain governmental

neutrality on the subject of religion. No government official has the “right” to use his or her governmental office, power or position to conduct a religious exercise at a government meeting. Private citizens, including governmental officials in their *personal capacities*, are free to practice their religion. That liberty is strengthened, rather than weakened, by keeping government out of the business of religion.

When legislative bodies schedule and host officials to pray as part of government meetings, courts consider the government to be the “speaker.” (For further discussion please see: Christopher C. Lund, *Legislative Prayer and the Secret Costs of Religious Endorsements*, 94 Minn. L. Rev. 972 (2010)). In *Turner v. City Council of City of Fredericksburg*, 534 F.3d 352, 353 (4th Cir. 2008), the Court held that the prayers were government speech and found that there was no violation of Free Speech and Free Exercise rights of an individual who was barred from imposing sectarian prayers at government meetings. When the government is the speaker, it has a duty to avoid taking action that advances one religious belief.

Separating personal and privately held religious beliefs from government business protects religious liberty.

“A determination that the government may not endorse a religious message is not a determination that the message itself is harmful, unimportant or undeserving of dissemination. Rather, it is part of the effort to ‘carry out the Founders’ plan of preserving religious liberty to the fullest extent possible in a pluralistic society.’ ”

Freedom From Religion Foundation v. Obama, No. 08-588, 2010 WL 1499451, at *31 (W.D. Wis. 2010), *appeal docketed*, No. 134 (7th Cir. April 22, 2010). “When the government associates one set of religious beliefs with the state and identifies nonadherents as outsiders, it encroaches upon the individual’s decision about whether and how to worship.” *McCreary*, 545 U.S. at 833 (O’Connor, J., concurring). Whether to pray and whether to believe in a god who answers prayer is an intensely precious and personal decision which is a paramount matter of conscience.

Misquoting History

Supporters of the problematic invocation policies frequently claim that such policies are a part of “our religious heritage.” In making such claims, they overstate and erroneously cite historical quotations.

1) Misquoting Justice Douglas

In letters to government officials, ADF often quotes Justice Douglas, saying, “We are a religious people whose institutions presuppose a Supreme Being...” *Zorach v. Clauson*, 343 U.S. 306, 313 (1952). In context, and as Justice Douglas later explained in his dissent in *McGowan v. Maryland*, 366 U.S. 420, 563 (1961), this is a reference to his view that the U.S. founders believed God gave Americans certain unalienable rights. As Justice Douglas said in the very next sentences following the quotation, “We guarantee the freedom to worship as one chooses. We make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary.” *Zorach*, 343 U.S. at 313-314.

Given the context, Justice Douglas was not espousing a declaration that our government supports belief in God. Justice Douglas explained his statement in *McGowan*:

“[I]f a religious leaven is to be worked into the affairs of our people, it is to be done by individuals and groups, not by the Government. This necessarily means, first, that the dogma, creed, scruples, or practices of no religious group or sect are to be preferred over those of any others...

The First Amendment commands government to have no interest in theology or ritual; it admonishes government to be interested in allowing religious freedom to flourish — whether the result is to produce Catholics, Jews, or Protestants, or to turn the people toward the path of Buddha, or to end in a predominantly Moslem nation, or to produce in the long run atheists or agnostics. On matters of this kind government must be neutral.”

366 U.S. at 563-564.

2) Stretching George Washington’s Words

ADF also quotes George Washington’s Farewell Address in support of its view that government bodies should perform Christian prayer. Yet, Washington clearly avoided using sectarian Christian language in his many writings. Washington deleted Congressional references to “Jesus Christ” in Thanksgiving Day proclamations, showing his concern to avoid sectarian preference. (*Moral Minority: Our Skeptical Founding Fathers*, Brooke Allen, pgs. 26-48.) Additionally, Washington was not known to regularly observe religious practices and some historians credibly argue that Washington was a Deist. (*The Religious Beliefs of Our Presidents, From Washington to FDR*, Franklin Steiner, pgs 14-41). More importantly, Washington was keenly aware of the divisiveness of religion. President Washington wrote:

Of all the animosities which have existed among mankind, those which are caused by a difference of sentiments in religion appear to be the most inveterate and distressing, and ought most to be deprecated. I was in hopes that the enlightened and liberal policy which has marked the present age would at least have reconciled Christians of every denomination so far that we should never again see their religious disputes carried to such a pitch as to endanger the peace of society.

(Letter to Sir Edward Newenham; October 20, 1792). His letters to religious minorities at the time, such as Jews, Catholics, and Quakers, reiterate the intent of the founders to form a government that would refrain from taking action adverse to religious minorities.

It is regrettable that support for government prayers rests on selective historical quotations. Even when examining historical quotations, there are ample statements that demonstrate that the government should refrain from prayer because it is divisive and violates the Establishment Clause. More importantly, as the Supreme Court said in *Allegheny*, “not even the ‘unique history’ of legislative prayer, can justify contemporary legislative prayers that have the effect of affiliating the government with any one specific faith or belief.” 492 U.S. at 603.

“Model” Government Prayer Policies are Fundamentally Flawed

We understand that ADF often sends a “model policy” regarding prayer to legislative bodies. We would like to address several provisions of these policies and ask the Council to reject the policy proposed by ADF. A nearly identical policy was ruled unconstitutional by a district court in North Carolina. *See Joyner v. Forsyth County, N.C.*, No. 1:07CV243, 2009 WL 3787754, (M.D.N.C., 2009), *appeal docketed*, No. 10-1232 (4th Cir. March 1, 2010). The ADF policy is based on misinformation and is being challenged in courts around the country and likely will continue to be challenged.

It is important to consider that the ADF policy is drafted with the intent to further ADF’s fundamentalist Christian mission. ADF describes itself as “a servant organization that provides the resources that will help keep the door open for the spread of the Gospel through the legal defense and advocacy of religious freedom, the sanctity of human life, and traditional family values.” ADF’s “statement of faith” says, “We believe the Bible to be the inspired, infallible, authoritative Word of God.” It appears that ADF takes on a number of controversial positions, such as opposition to gay rights (“the homosexual agenda”) and embryonic stem cell research, which has the support of an overwhelming number of Americans. ADF continues to try to influence government bodies to support *Christian* symbols on public lands and support government prayer policies that ensure *Christian* prayers will permeate government meetings.

Governmental bodies may not promote religion or prefer one religion over another. The Supreme Court has said:

The ‘establishment of religion’ clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect ‘a wall of separation between Church and State.’

Everson v. Board of Ed. of Ewing Tp., 330 U.S. 1, 15-16 (1947).

We understand that ADF advocates a policy that provides an invitation to local clergy to conduct prayers at government meetings. In letters to legislative bodies, ADF has referred to such a practice as providing an “open forum.” This terminology is legally incorrect and is designed to further ADF’s false claim that not including Christian prayers at government meetings is “censorship.” To be clear, a practice of inviting clergy to give a prayer does not create an “open forum” or “limited forum,” and disallowing the prayer practice does not constitute unconstitutional “censorship.” We are not aware of any court anywhere in the country that has ruled otherwise.

Federal courts that have examined the speech issue have held that prayers offered by invited clergy constitute government speech. *See Turner*, 534 F.3d at 353 (“the prayers at issue here are government speech”); *Simpson*, 404 F.3d at 288 (“the speech... was government speech.”). *Joyner v. Forsyth County, N.C.*, No. 1:07CV243, 2009 WL 3787754 *5, (M.D.N.C., 2009) (“Defendant’s invocation prayers are government speech.”).

The only appellate court to address ADF’s censorship claims found that such claims had no merit. In an opinion by retired Justice Sandra Day O’Connor, the Fourth Circuit said, “Because the prayers at issue here are government speech, we hold that Fredericksburg’s prayer policy does not violate Turner’s Free Speech and Free Exercise rights.” *Turner*, 534 F.3d at 353. A disclaimer on the Council agenda will not magically transform the invocation practice into a public forum for private speech. A government body that has a policy of selecting speakers for an official government prayer at an official meeting cannot claim that it has created an open forum. That is affirmed by the fact that the proposed policy provides that the government maintains control over who speaks (clergy only) and what they may say (prayer that doesn’t “disparage any faith or belief”). The prayers are government speech. Of course, “government speech must comport with the Establishment Clause.” *Pleasant Grove City, Utah v. Summum*, 129 S.Ct. 1125, 1127 (2009).

Another key problem with the ADF prayer policy is the proposal that the invocations will not be listed as an agenda item and take place before the opening gavel. It would seem that ADF views these steps as somehow making the government prayers less official. It is quite a self-contradiction to adopt an official prayer policy that removes invocations from the agenda but still regularly schedules prayers before meetings. This ruse by ADF has been rejected by a court examining the practice. *See Joyner v. Forsyth County, N.C.*, No. 1:07CV243, 2009 WL 3787754. Not only is such a practice contrary to openness and transparency in government, it lacks any support that would make the policy stand on firmer legal ground. In fact, the district court in *Joyner* found that Forsyth County’s implementation of the ADF prayer policy was unconstitutional.

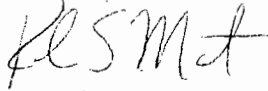
The policy also claims that it is for the benefit of the Council. Certainly, if any council members wanted to gather in prayer on their own time they could do so. It is at least suspect to have an official prayer policy if the only intended audience is a small group of council members. The reality is that such a policy impacts all citizens wanting or needing to participate in City of Yakima affairs. Any Council practice that uses the microphone for all to hear; that spends staff time on inviting and arranging speakers, that asks citizens to stand, bow their heads, or to remain silent is clearly directed at the entire audience and is intended to send a message of religious endorsement.

The divisiveness that government prayer creates must raise concern. The Council may consider incorporating provisions of our enclosed alternative policy. The best policy is to avoid religious ritual at government meetings and thereby permit all citizens to choose if and in what ways to practice and express individual freedom of conscience in their personal lives, rather than as an act of government.

Conclusion

Official government prayers are divisive, unnecessary, and constitutionally problematic. The Council respects all citizens by removing prayers from official government business. Yakima City Council members and citizens may freely engage in prayer and religious practices outside of government business, which ensures that elected officials run no risk of violating the Constitution. Please respect the freedom of conscience of all Yakima citizens. By ensuring that government does not take sides on a matter that must be left to the individual conscience, the Council strikes a blow *for*, not *against*, religious liberty.

Sincerely,



Rebecca S. Markert
Staff Attorney

cc: The Honorable Micah Cawley, Mayor

RECEIVED
CITY OF YAKIMA

JAN 21 2011

OFFICE OF CITY COUNCIL

P. O. Box 183
Harrah, WA 98933
January 18, 2011

Micah Cawley, Mayor
Yakima City Council
129 N 2nd St.
Yakima, WA 98901

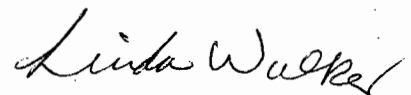
Dear Mayor Cawley:

Thank you for opening the Yakima city council meetings with prayer. Although I'm not a resident of Yakima, I'm very concerned about the situations not only in Yakima, but in all of the towns in the Yakima Valley. All of our towns have a desperate need for prayer.

I'm not up to date on the current situation regarding prayer at your meetings, whether or not you've been called to court. I talked with my son, who is an attorney, about all of this. He suggested that if you are taken to court that you contact the Alliance Defense Fund, a law firm based in Scottsdale, Arizona, for help. This firm has been very active in recent years in defending the constitutional rights of city councils throughout the United States to open their meetings with prayer. Their services are free of charge.

The e-mail address of the Alliance Defense Fund is AllianceDefenseFund.org.

Sincerely;



Mrs. Linda Walker

**BUSINESS OF THE CITY COUNCIL
YAKIMA, WASHINGTON
AGENDA STATEMENT**

Item No. 7-6
For Meeting Of: February 1, 2011

ITEM TITLE: Open Record Public Hearing to consider the City of Yakima Planning Commission's recommendation on amendments to the City's Environmental Policy, YMC Chapter 6.88.

SUBMITTED BY: Joan Davenport, Acting Director of Community & Economic Development

CONTACT PERSON / TELEPHONE: Joseph Calhoun, Assistant Planner, 575-6162

SUMMARY EXPLANATION: Public hearing to consider the City of Yakima Planning Commission's recommendation to adopt the proposed Environmental Policy amendments to the Yakima Municipal Code. This chapter contains this city's SEPA procedures and implements the purposes and policies of SEPA pursuant to RCW 43.21C.010 and 43.21C.020. Aside from housekeeping changes, the proposed amendments increase certain flexible thresholds to the maximum allowed under state law and also implement new zoning districts which were created recently in the Urban Area Zoning Ordinance.

Resolution <input type="checkbox"/>	Ordinance <input checked="" type="checkbox"/>	Contract <input type="checkbox"/>	Other <input checked="" type="checkbox"/> (Specify) <u>YPC Findings</u>
Funding Source <u>N/A</u>			
APPROVAL FOR SUBMITTAL: <u><i>M. A. M.</i></u> Acting City Manager			

STAFF RECOMMENDATION: Adopt the Adopt the amendments to the Environmental Policy, YMC Chapter 6.88.

BOARD RECOMMENDATION: The City of Yakima Planning Commission recommended approval of amendments to Chapter 6.88 on November 10, 2010

COUNCIL ACTION: