



# FREEDOM FROM RELIGION FOUNDATION

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March 15, 2010

**SENT VIA FAX AND U.S. MAIL  
(209) 923-8960**

COPY

Mayor Willie Weatherford and Members of the Council  
City of Manteca  
City Hall  
1001 W Center St  
Manteca CA 95337

Re: Invocations at City Council Meetings

Dear Mayor Weatherford and Members of the Council:

I am writing on behalf of a concerned Manteca resident and taxpayer and other California members of the Freedom From Religion Foundation (FFRF) to urge you to discontinue the practice of scheduling Manteca City Council meetings with prayers, specifically the unconstitutional invoking of Jesus Christ. FFRF is a nationwide nonprofit organization, which works to protect the constitutional principle of separation of church and state. FFRF represents over 14,600 members across the country, including more than 2,000 members in California.

It is our information and understanding that the Manteca City Council (hereinafter "City" or "Council") includes a prayer or invocation as part of its meetings. We understand that local clergy members and other religious leaders are typically invited to give a prayer. It is our further understanding that members of the public regularly attend Council meetings and have necessary business before the Council.

Upon reviewing all Council meetings available on the City's website, it is clear that these prayers are rarely, if ever, non-denominational and non-sectarian. A majority of the prayers ended "In Jesus' name." The following is examples of recent prayers given:

**February 16, 2010: Colonel Stone (scheduled pastor not present)**

"Please join me in prayer. Thank you, Lord, for the opportunity that we have to participate in our government. We thank you for these leaders and the citizens who have taken the time out of their lives to have their say and to make their decisions and to be involved in the community. We thank you for all of them, Lord. We pray that you will be

with us tonight, give us wisdom, and give us your guidance as we serve the community. *We ask this in Jesus' name. Amen.*"

**February 2, 2010: Kirk Waters, Fire Chief**

"Our dear most high Father in heaven, we're thankful for the opportunity we have to come before Thee at this city council meeting. We're especially thankful for the opportunity we have to serve the citizens of Manteca. We're thankful for our mayor and council. Please, please bless them, Father, as they continue to lead, guide, and direct us, that they will be guided, that they will be inspired to continue to make decisions that are pleasing to Thee, and that also are in the best interests of the community. Father, we're thankful for all those who serve in the military. Please, please protect them and watch over their families. Again, Father, we'll thankful for all our many blessings. *We dedicate this meeting to Thee, and we do so in the name of Jesus Christ. Amen.*"

The current practice of offering invocations during City Council meetings violates the First Amendment to the United States Constitution and California state law. The Council must take immediate action to stop this illegal practice.

First and foremost, the prayers do not fall into the narrow exception of constitutionally permissible government-sponsored prayer laid out by the Supreme Court. In *Marsh v. Chambers*, 463 U.S. 783 (1983), the Supreme Court ruled that the Nebraska legislature's history and tradition of opening with a prayer by a paid chaplain was constitutional. The exception found by the Court in this case was confined to a situation involving a non-sectarian, non-denominational prayer, led by an officiant who had not been selected based upon any impermissible religious motive, and which was addressed to the body of legislators present and no one else. See *Marsh*, 463 U.S. 783. Additionally, the Court held that legislators must have the option not to participate. The prayer opportunity must not be "exploited to proselytize or advance any one, or to disparage any other, faith, or belief." 463 U.S. at 794-95. The Court also noted that the content of the prayers was permissible because the chaplain has "removed all references to Christ." *Id.* at 793 n.14.

Even if the Council had an established history of opening its meetings with prayer, the practice still violates the Establishment Clause because of its continual references to Christ. In *County of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 603 (1989), the Supreme Court found that, even if history and custom had saved non-sectarian legislative prayer, "history cannot legitimate practices that demonstrate the government's allegiance to a particular sect or creed." Additionally, the Court reiterated, "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.* The Court continued, "The legislative prayers involved in *Marsh* did not violate this principle because the particular chaplain had 'removed all references to Christ.' " *Id.*

Lower federal courts, including the Ninth Circuit, which encompasses California, have continued to emphasize that some government-sponsored prayers are constitutionally

permissible only because they are non-sectarian, non-denominational and do not invoke a particular faith or deity. *See, e.g., Bacus v. Palo Verde Unified School District*, 52 Fed.Appx. 355 (9th Cir. 2002)(unpublished)(“These prayers advanced one faith, Christianity, providing it with a special endorsed and privileged status in the school board. Some religions accept Jesus Christ as the Messiah, some do not, and some people do not believe in any religious faith. Solemnizing school board meetings ‘in the Name of Jesus’ displays ‘the government’s allegiance to a particular sect or creed.’ ”); *Snyder v. Murray City Corp.*, 159 F.3d 1227, 1234 (10th Cir. 1998)( “...the kind of legislative prayer that will run afoul of the Constitution is one that proselytizes particular religious tenet or belief, or that aggressively advocates a specific religious creed, or that derogates another religious faith or doctrine.”); *Wynne v. Town of Great Falls*, 376 F.3d 292 (4th Cir. 2004)(holding that the Establishment Clause was violated when the town council opened sessions with prayer containing references to Jesus Christ.

Recently, the Supreme Court let stand a decision from the Fourth Circuit, which upheld a government policy requiring prayer before city council meetings to be non-denominational. In *Turner v. Fredericksburg*, 534 F.3d 352, 353 (4th Cir. 2008)(cert. denied, 2009 WL 56225 (U.S.)(No. 08-518), the Fourth Circuit held that prayers held at the city council meetings constituted government speech. Therefore, it was proper for the city council to prohibit sectarian prayers. *Id.* at 353. Justice O’Connor, writing for the court, stated, “[t]he restriction that prayers be nonsectarian in nature is designed to make the prayers accessible to the people who come from a variety of backgrounds, not to exclude or disparage a particular faith.” *Id.* at 356.

Even under California state law, the practice of invoking Jesus during prayers at legislative sessions is illegal. In *Rubin v. City of Burbank*, 101 Cal. App. 4th 1194, 1205 (Cal. Ct. App. 2002), a California appellate court ruled that an “invocation offered to Jesus Christ violated the Establishment Clause because it conveyed the message that Christianity was being advanced over other religions.” The court explained, “By directing the prayer to ‘Our Father in Heaven... in the name of Jesus Christ’ the invocation conveyed the message that the Burbank City Council was a Christian body, and from this it could be inferred that the council was advancing a religious belief.” *Id.* The court also rejected the argument that a policy restricting or prohibiting clergy or others who offer the invocations from invoking Jesus Christ or other deities abridges the right to free speech. *See id.* at 1207.

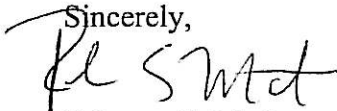
The Manteca City Council cannot, under current federal and state law, permit any prayers that contain references to an explicit deity. The prayers currently given during Council meetings impermissibly advance Christianity and lead a reasonable observer to believe that the Council is endorsing not only religion over nonreligion, but also Christianity over other faiths. Even though the Council may be permitted to engage in invocations prior to its meetings, this opportunity does not provide “license to advance its own religious views in preference to all others...” *Wynne*, 376 F.3d 292. To do so would “[convey] a message that the [Manteca City Council] is a Christian body and ... the council [is] advancing a religious belief.” 101 Cal. App. 4th at 1205. Therefore, the City cannot allow

prayers, which invoke Jesus Christ as well as those, which quote patently Christian scripture, readings or prayers such as the Lord's Prayer.

Furthermore, this practice inappropriately alienates any non-Christians and non-believers in Manteca. Their efforts to participate in public meetings are adversely affected by these types of prayers, which turn non-believers and non-Christians into political outsiders of their own community and government. The constitutional rights of citizens to participate in government meetings such as the Council's monthly meetings should not be predicated upon being subjected to Christian-based prayers.

By hosting sectarian prayers, which show the Council's preference for Christianity, the Council is inappropriately entangling itself with religion. To avoid the divisiveness these prayers cause within the community — as evidenced in neighboring Lodi and Tracy — the solution is simple: discontinue official, government prayers before legislative meetings. At a minimum, the City of Manteca should require that any invocations given before Council meetings are non-sectarian and non-denominational.

We urge you to discontinue this practice immediately and bring the Council back into compliance with constitutional dictates. We respectfully request a written reply addressing the steps you are taking to remedy this constitutional violation.

Sincerely,  
  
Rebecca S. Markert  
Staff Attorney