February 18, 2015

TO: ACHD Commissioners, Director Bruce S. Wong

FROM: Steven B. Price, General Counsel

SUBJECT: Adoption of Resolution 2094 - Opening Invocations before Ada County Highway District Commission Meetings

Staff Report for February 25, 2015 Commission Meeting

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Executive Summary

The proposed Resolution 2094 (Attachment “1”) provides for the adoption of opening invocations before the commencement of ACHD Board of Commissioner meetings. The purpose of an invocation is to solemnize the following proceedings of the Commission and prepare the Commission for the tasks laid before them as elected representatives of the public. Resolution 2094 establishes the legal standards and process associated with the invocation policy.

Facts & Findings

The United States Supreme Court Decision of Town of Greece v. Galloway, 134 S. Ct. 1811, 2014 WL 1757828 (May 5, 2014) recently validated the use of opening prayers at public meetings. Resolution 2094 proposes a policy allowing for an opening invocation before the commencement of each ACHD Commission meeting. Resolution 2094 sets forth the standards and policies that will enable ACHD to maintain a neutral status of religious inclusion. Part of these protections will require the Clerk of the Board (the “Clerk”) to draft and maintain a list of all eligible assemblies based on the requirements laid out in Resolution 2094. Participation shall be voluntary and no member of the public, staff, or other attendees shall be penalized for deciding to not participate.

Fiscal Implications

None - No invocation speaker shall receive any compensation for his or her service.

Policy Implications

Adopts a new policy that establishes an opening prayer prior to commencement ACHD Board of Commissioner meetings.
Recommendations

1. Adopt Resolution 2094, as presented or with amendments;
2. Reject Adoption of Resolution 2094;
3. Adopt a policy that provides for a moment of silence before each Commission meeting

Attachment(s):

Proposed Resolution Number 2094
RESOLUTION NO. 2094

BY THE ADA COUNTY HIGHWAY DISTRICT BOARD OF COMMISSIONERS: REBECCA W. ARNOLD, SARA M. BAKER, JIM D. HANSEN, KENT GOLDTHORPE AND PAUL WOODS

A RESOLUTION FOR ADOPTING A POLICY FOR OPENING INVOCATIONS BEFORE MEETINGS OF THE BOARD OF THE ADA COUNTY HIGHWAY DISTRICT COMMISSIONERS;

WHEREAS, Ada County Highway District has the exclusive jurisdiction and responsibility for all public highways and public rights-of-way within Ada County, Idaho, except state highways and interstate freeways; and

WHEREAS, Ada County Highway District has authority to adopt ordinances, rules, regulations, internal policies as necessary, for carrying into effect and discharging all powers and duties conferred to a single county-wide highway district pursuant to Idaho Code, chapter 13 and chapter 14 of Title 40; and

WHEREAS, the Ada County Highway District Board of Commissioners (the ACHD Board) wishes to solemnize its proceedings by allowing for an opening invocation before each meeting for the benefit and blessing of the Board; and

WHEREAS, now desires to adopt this formal, written policy to clarify and codify 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.” Id. at 786; and

WHEREAS, in the Town of Greece v. Galloway, 134 S. Ct. 1811 (May 5, 2014), the United States Supreme Court validated opening prayers at meetings of the Board for the Towne of Greece, New York finding that “legislative prayers lends gravity to public business, reminds lawmakers to transcend petty differences in pursuit of a higher purpose, and expresses a common aspiration to a just and peaceful society.” Id.; and

WHEREAS, the ACHD Board desires to avail itself to the Supreme Court’s recognition that is constitutionally permissible for a public body to “invoke divine guidance” on its work. Id.; and
WHEREAS, the United States Supreme Court has clarified 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.” Town of Greece, 134 S. Ct. 1811; and

WHEREAS, in Town of Greece the Supreme Court rejected a challenge based on the religious content of the prayers and cautioned against government officials acting as “supervisors and censors of religious speech” by requiring that prayers be “generic” and “nonsectarian” noting that “[t]he law and the Court could not…require ministers to set aside their nuanced and deeply personal beliefs for vague and artificial ones.” Id. Further, 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 a conscience dictates.” Id.; and

WHEREAS, this ACHD Board is not establishing a policy that defines the constitutional limits for permissible public invocations; rather, this ACHD Board intends 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, 2014 WL 175828; see also Simpson v. Chesterfield Cnty. Board 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 ACHD Board intends to adopt a policy 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 ACHD Board intends to adopt a policy that will not 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; and

WHEREAS, the ACHD Board believes that religious leaders that serve the local community in Ada County are peculiarly suited through training, tradition, and public service to petition for divine guidance upon the deliberations of the ACHD Board, and to accomplish the ACHD Board’s objective to solemnize public occasions, express confidence in the future, and to encourage the recognition of what is worthy of appreciation in society; and
WHEREAS, the ACHD Board accepts as binding the applicability of general principles of law and all the rights and obligations afforded under the United States and the Idaho Constitutions and statutes.

NOW THEREFORE BE IT RESOLVED by the Board of the Ada County Highway District, that the ACHD Board hereby adopts the following written policy regarding opening invocations before meetings of the ACHD Board, to wit:

1. It is the intent of the ACHD Board to allow a private citizen to solemnize the proceedings of the ACHD Board. It is the policy of the ACHD Board to allow for an invocation, which may include a prayer, a reflective moment of silence, or a short solemnizing message, to be offered before its meetings for the benefit of the ACHD Board.

2. No member or employee of the ACHD Board or any other person in attendance at the meeting shall be required to participate in any prayer that is offered and such decision shall have no impact on the ability of the person to actively participate in the business of the ACHD Board and shall have no impact on such person’s employment, advancement, or compensation.

3. No member or employee of the ACHD Board 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 ACHD Board 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 of an Assemblies List for the Ada County Highway District. To ensure that such a person (the “invocation speaker”) is selected from among a wide pool of representatives, on a rotating basis, the invocation speaker shall be selected according to the following procedure:

   a. The Secretary/Clerk to the Board (the “Secretary/Clerk”) shall compile and maintain a database (the “Assemblies List”) of the assemblies with an established presence in Ada County that regularly meet for the primary purpose of sharing a religious perspective (hereinafter referred to as a religious assembly).

   b. The Assemblies List shall be compiled by using reasonable efforts, including research from the Internet, to identify all “churches,” “synagogues,” “congregations,” “temples,” “mosques” or other
religious assemblies in Ada County. All religious assemblies with a presence in Ada County are eligible to be included in the Assemblies List, and any such religious assembly can confirm its inclusion by specific written request to the Secretary/Clerk.

c. The policy is intended to be and shall be applied in a way that is all-inclusive of every diverse religious assembly serving the citizens of Ada County. The Assembly 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 Board’s invitation and participate.

d. The Assemblies List shall also include any religious assembly located outside Ada County if such assembly is regularly attended by at least one resident of Ada County and such resident requests inclusion of the assembly by specific written communication to the Secretary/Clerk.

e. The Assemblies List shall be updated, by reasonable efforts of the Secretary/Clerk, in November of each calendar year. The Assemblies List may be modified at any time upon a request of inclusion of the assembly by specific written communication to the Secretary/Clerk.

f. On or about December 1 of each calendar year, the Secretary/Clerk shall mail an invitation addressed to the “religious leader” of each entry on the Assemblies List.

g. The invitation shall be dated at the top of the page, signed by the Secretary/Clerk at the bottom of the page, and read as follows:

Dear Religious Leader,

The Board of the Ada County Highway District has adopted a policy to invite members of the clergy or religious representatives in Ada County to voluntarily offer an invocation before the beginning of its meetings, for the benefit and blessing of the ACHD Board. As a representative of one of the religious congregations with a presence serving the local community you are eligible to offer this important service to an upcoming meeting of the ACHD Board.

If you are willing to assist the ACHD Board in this regard, please send a written reply at your earliest convenience to the
Secretary/Clerk to the Ada County Highway District at the address included on this letterhead. Representatives are scheduled to be a first-come, first-serve basis. The anticipated dates of the ACHD Board’s scheduled meetings for the upcoming year are listed on the following, attached page. If you have a preference among the dates, please state that request in your written reply.

This opportunity is voluntary, and you are free to offer the invocation according to the dictates of your own conscience. To maintain a spirit of respect, the ACHD Board requests only that the opportunity not be exploited as an effort to convert others to the particular faith of the invocation speaker or to disparage any faith or belief different than that of the invocation speaker.

On behalf of the Board of the Ada County Highway District Commissioners, I thank you in advance for considering this invitation.

Sincerely,
Secretary/Clerk to the Board of Ada County Highway District Commissioners

h. The respondents to the invitation shall be scheduled on a first-come, first-serve basis to deliver the invocation.

i. In the event an eligible representative of an Assembly serving the local community believes that the Secretary/Clerk has not complied with the terms of this policy, the representative has the right to have the matter reviewed by the ACHD Board.

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 ACHD 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. The Secretary/Clerk shall make every reasonable effort to ensure that a variety of eligible invocation speakers are scheduled for the ACHD Board’s meetings.
8. Neither the ACHD Board nor the Secretary/Clerk shall engage in any prior inquiry, review of, or involvement in, the content of any invocation to be offered by an invocation speaker.

9. This policy is not intended, and shall not be implemented or construed in any way, to affiliate the ACHD Board with, nor express the ACHD Board’s preference for, any faith or religious denomination. Rather, this policy is intended to acknowledge and express the ACHD Board’s respect for the diversity of all religious denominations and faiths represented and practiced among the citizens of Ada County.

NOW, THEREFORE, BE IT FURTHER RESOLVED that this policy shall become effective immediately upon the adoption by the ACHD Board.

Adopted and approved by the Board of Commissioners of the Ada County Highway District on the ___th day of January, 2015.

BOARD OF HIGHWAY DISTRICT COMMISSIONERS OF ADA COUNTY, IDAHO:

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Jim D. Hansen, President        Sara M Baker, Vice President

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Rebecca W. Arnold, Commissioner  Kent Goldthorpe, Commissioner

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Paul Woods, Commissioner