

**CITY OF COSTA MESA  
CITY ATTORNEY'S OFFICE  
INTEROFFICE MEMORANDUM**

To: Mayor Pro Tem Allan Mansoor  
From: Tom Wood, Acting City Attorney  
Copy to: City Council, City Manager, and Deputy City Clerk  
Date: February 20, 2004

Subject: Proposal to Replace Council Meeting Invocations With  
A Moment of Solemn Expression

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You have asked that I review a proposed alternative to the procedure followed by the City Council for allowing invocations at regular Council meetings. The alternative procedure is one developed by the Pacific Justice Institute ("PJI"), a legal public interest organization that promotes "religious freedom, parental rights, and other civil liberties." PJI's alternative calls for Council meetings to begin with a short moment of "solemn expression," instead of an invocation. This procedure is proposed to avoid the difficulty that the City of Burbank encountered when it was sued because its invocations were deemed "sectarian," i.e., related to a specific religion. Burbank's practice of allowing sectarian invocations was successfully challenged in court and found to violate the First Amendment's prohibition that there be "no law respecting an establishment of religion."

I have reviewed the proposed alternative practice as described in the PJI memorandum dated 7/9/03. Based upon the legal authorities cited in the memorandum, the new system should avoid the Constitutional problem that Burbank encountered and withstand a similar legal challenge.

As we have discussed, a small modification to PJI's suggestion would work better. Rather than inviting persons shortly before each meeting to volunteer to present his or her remarks of "solemn expression", it would be better to continue following the current practice of the City Clerk's office maintaining an ongoing list of persons who have informed the Deputy City Clerk of their interest, and placing their names on the list. The Deputy City Clerk could then notify the next person on the list that it is his/her turn to give the solemn expression at the next regular Council meeting.

If the City Council wishes to replace the current invocation with this alternative practice of inviting persons to give a moment of solemn expression, this new practice could be implemented by the Council's approving the draft Council Policy No. 000-12 I have prepared. (See attached draft policy.)

If the Council adopts this new practice, then a new form letter could be prepared for sending to the persons who present the moment of solemn expression. The letter would explain the new policy underlying this practice. (See attached sample letter.)

I would be happy to answer any questions you may have about this matter.