

## Expert: Laguna Niguel policy against renting space to religious groups is unconstitutional

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A Laguna Niguel city policy that bans religious groups from regularly renting public facilities is unconstitutional, according to the dean of UC Irvine's law school.

"The law here is actually clear," Erwin Chemerinsky told the Register. "If a city rents out space to community groups, it cannot discriminate against religious groups. There are Supreme Court cases exactly on point for this."

Employees of three other south Orange County cities who were contacted for this article said they regularly allow churches to rent out public rooms.

Laguna Niguel's rental policy was brought up several months ago when local pastor Rick Moore asked to rent the Community Room in City Hall for Sunday services, Councilman Robert Ming said.

But Moore, known for helping a Maui shark-attack victim last summer, was denied by city staff due to a policy stating that "facilities may not be used for the ongoing conduct of religious services." Moore could not be reached for comment.

The policy was placed on the Dec. 3 City Council agenda for discussion at Ming's request.

"Our policy seemed to single out religious uses and treat them different than other uses," he said.

In a staff report, City Attorney Terry Dixon said the policy likely originated before Laguna Niguel was incorporated in 1989. He said he could recall previous requests by churches to rent the Sea Country Senior & Community Center and the former City Hall council chamber for Sunday services, and all were denied.

"The concern has been that a religious group shouldn't be allowed to, in essence, convert a city facility into its church by the regular use of that facility for conducting religious services," Dixon wrote.

But limiting the number of times the Community Room can be rented in a year by any group – while taking out the part mentioning religion – would probably prevent that from happening, Ming said.

Councilman Jerry Slusiewicz, however, said the policy should stay for reasons related to separation of church and state.

"There's some sense involved with not opening that (religion) door," he said at the December meeting. "You open that door and there are a lot of different things that you're going to allow in here. There are a lot of people that call themselves religious groups that we may not want."

Other concerns included funding to staff the room on Sundays, when it is not usually used. Staffing could cost \$112 to \$162 per hour, a staff report said, while the fee for room users is \$50.

Eventually, the city attorney said he wanted more time to research the subject, as he could see both sides. The council agreed to give him two or three months before reporting back.

"(Cities) don't have to rent to anybody," Chemerinsky said this week. "But if they're going to open their facilities to some groups, they can't discriminate with religious vs. nonreligious."

Chemerinsky said Supreme Court case law is clear on the subject. In a 2001 case, *Good News Club v. Milford Central School*, a Christian organization for children asked to hold after-school meetings at Milford Central, a public school. But its proposed use – Bible lessons, singing songs and studying Scripture – wasn't allowed by a community use policy.

In a 6-3 decision, the court sided with the *Good News Club*, saying the school and other government entities cannot discriminate against speech on the basis of its viewpoint.

Other Orange County cities don't mention religion in their facility policies, and they rent to religious groups regularly, even on weekends.

In Mission Viejo, Community and Senior Center Services Supervisor Marcelo Dario said the city treats churches "just like any other group." Religious groups rent rooms there fairly often, he said. Organizations can request up to 12 months of continuous use, according to the city's policy.

Patty Quilter, Community Center coordinator for Laguna Beach, said a Bible study group rents a community room on Sunday evenings. The city rents out its four rooms on a quarterly basis.

"The criteria is the same for everyone," she said, though it's always a challenge for organizations to find an open slot.

Pamela Passow, San Clemente's recreation manager, said "we do not discriminate against what they may or may not be renting for." The city rents out a Community Center room every Sunday afternoon to one church. Another church often rents out the Ole Hanson Beach Club, she said.

Frequent renters, like a church group, go through the same application process, and Passow said staff is usually able to find an open room. If there's a conflict, it's first-come, first-served.

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