

ITEM#: 33
DATE: 10-10-23
DEPT: LEGAL

COUNCIL ACTION FORM

SUBJECT: OUTDOOR DISPLAYS ON CITY-OWNED PROPERTY

BACKGROUND:

At Tom Evans Plaza on Main Street, the City has historically allowed the Ames Chamber of Commerce to put up a display during the holiday season. The Chamber in earlier years placed a Christmas tree on the plaza, but in recent years changed to placing a snowflake emblem, which is approximately seven feet tall.

In late 2022, the City was contacted by an attorney for Chabad Lubavitch of Ames, asking for permission to erect a nine-foot tall lighted menorah to be in place over the eight days of Hanukah in December. Under First Amendment case law, it seems likely that the City had created a limited “public forum” for the holiday season by allowing the Chamber’s snowflake, and that saying no to another group that wanted to put up a display would likely be viewed as “content discrimination” under First Amendment case law. Therefore, the City granted Chabad Lubavitch’s request to place the menorah on Tom Evans Plaza.

The City Attorney outlined the issues related to this request in a memo dated January 5, 2023. At the Council meeting on January 10, 2023, the City Council directed staff to place this matter on a future agenda for discussion.

There are several concerns about allowing ongoing displays on the Plaza. Under First Amendment case law, after establishing a public forum, the City is allowed to place “reasonable time, place and manner” restrictions, but cannot engage in content discrimination. For example, it is possible to limit the number of displays for pedestrian-traffic-flow reasons, perhaps on a first-come, first-served basis, or through the use of a lottery system. **However, the City could not prohibit displays because of the nature or message of the displays, for example by approving displays that are secular in nature but prohibiting religious displays, or by prohibiting displays that the Council or others might view as offensive.**

The City can decide to not allow any ongoing displays on City property, even if displays have been allowed displays in the past. As long as this decision was consistently adhered to in the future, such a policy would not be a violation of the First Amendment.

It should be noted that the City has allowed temporary displays in conjunction with a gathering or a rally on City property, where a display has been placed for the duration of the gathering but is then taken down at the conclusion of the gathering. A policy prohibiting ongoing displays would not prevent this kind of attended, temporary display

from occurring unless the City Council wished to prohibit them. **It is important to note that even a temporary display is not subject to the City's control over the content, which may result in a temporary display that is objectionable or offensive to some in the public.**

ALTERNATIVES:

1. Approve a policy that no ongoing displays, other than City-owned displays, will be allowed on City property, with the exception of temporary displays in conjunction with a rally or gathering of people.
2. Do not allow either ongoing or temporary displays on City property, other than City-owned displays.
3. Allow the placement of displays by the public on designated City property during a specific time period during the year (e.g., the month of December)
4. Do nothing, and continue to allow the public to place ongoing displays without restriction.

CITY MANAGER'S RECOMMENDED ACTION:

City property is owned, managed, and controlled by the City for the benefit of the public. Allowing ongoing displays may give the appearance of the City's endorsement of the display, which could include displays that some or many would find offensive. Temporary displays that are in place only while attended by individuals at a gathering or rally may still result in displays that some in the public find objectionable or offensive, but staff believes there is less of a possibility that the display will be associated with the City compared to an unattended display on City property. Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1.