

MEMO

Legal Department

To: Mayor Haila, Ames City Council

From: Mark O. Lambert, City Attorney

Date: January 5, 2023

Subject: Displays at Tom Evans Plaza

At Tom Evans Plaza on Main Street in Ames, the Ames Chamber of Commerce has historically put up a display during the holiday season. The Chamber in earlier years used to place a Christmas tree on the plaza, but in recent years changed to placing a giant snowflake emblem, which is approximately 7 feet tall.

This year, the City was contacted by an attorney for Chabad Lubavitch of Ames, asking for permission to erect a large, 9-foot tall lighted menorah to be in place over the 8 days of Hanukah in December. After doing some legal research, it was determined that the City likely 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. The City granted Chabad Lubavitch’s request to place the menorah on Tom Evans Plaza.

There are several concerns about allowing displays on the Plaza. Under First Amendment case law, after establishing a public forum, we are allowed to place “reasonable time, place and manner” restrictions, but cannot engage in content discrimination. For example, we could limit the number of displays for pedestrian-traffic-flow reasons, perhaps on a first-come, first-served basis, or a lottery system. We could not prohibit displays that some might view as offensive.

The Council has some options, including:

1. The Council could continue to allow groups to put up displays during the holiday season.
2. The Council could continue to allow groups to put up displays during the holiday season, but limit the number of displays.
3. The Council could establish a policy that no displays (except City-owned displays) will be allowed at Tom Evans Plaza.

There are a variety of angles to this matter, which staff feels the Council should discuss at an upcoming Council meeting with a fuller memo discussing the issues. **Therefore, staff requests that this issue be placed on a future Council agenda for further discussion.**

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