

**ADOPTING A POLICY FOR THE USE OF CITY HALL GROUNDS
FOR OTHER THAN GOVERNMENTAL FUNCTIONS**

Recitals.

The United States Supreme Court has established rules to guide local, state and federal governments regarding the use of government lands and facilities with respect to free speech. Simply stated, those rules require that if a government allows any group or individual to use or rent the government's lands or buildings for any activity or purpose that involves "speech," all other groups and individuals must have the same opportunity, subject only to what the court has called "reasonable time, space and manner" requirements.

For a local government such as the City of Grand Junction, these U.S. Supreme Court rulings mean that the use of City facilities or property to convey a message by a non-government group or person may mean that the facility or property is a "limited public forum."

The difficulty that has been dealt with in those Supreme Court cases involves each community's definition of "acceptable" speech and public behavior. The courts resolve these questions by reference to one of the unique features of the U. S. Constitution: highly controversial, even unpopular, views and speech must receive the same treatment from government as does popular and widely held beliefs.

Thus, each community must first decide if its local governmental facilities should be the location for community debate and discussions—other than government business. In fact, the term "soap box" speeches derives from just such messages given atop the actual soap boxes in London's Hyde Park.

Many communities have decided that such non-governmental speech, of whatever form, is best kept separate from local governmental facilities, just to avoid the complications that can flow from the creation of "soap box" *fora*.

Unfortunately, in order to implement that conclusion, no requests for use of local facilities can be granted, as mandated by the U. S. Supreme Court.

We reach our conclusion based on the following findings and beliefs:

- 1) With regard to the use of City Hall grounds at the City Hall located at 250 N. 5th St. in Grand Junction, we find that the community's best interest would be served by not creating a "limited public forum."

- 2) We acknowledge that “free speech” can still occur on the adjacent sidewalks in accordance with the U S Supreme Court constitutional directives. Such areas are termed “traditional public forums” by the courts.
- 3) We reach these conclusions reluctantly, after serious and probing debate because we do not want to reject at any level the community’s desires to memorialize the horrors of September 11, 2001.
- 4) As individual members of the community, we applaud efforts to remind us all of our heritage, our deeply held mores, and our common history. We must, however, distinguish our individual beliefs from the standards and policies of our home rule city government.
- 5) We adopt this policy based on the clear directive of the United States Supreme Court.

NOW THEREFORE BE IT RESOLVED:

The grounds of City Hall are not appropriate for use by other than governments for “speech,” as defined by the federal and state courts.

The staff of the City is directed to communicate this policy to those interested, along with our reasoning therefor, and the legal precedents that direct our decision.

ADOPTED this 17th day of July, 2002.

/s/: Cindy Enos-Martinez
President of the Council

/s/: Stephanie Tuin
City Clerk

Memo

To: City Council
From: City Attorney and City Manager
Date: 10/24/2011
Re: First Baptist Church Request/Public Forum

[Confidential: Until the Council determines its position, this memorandum should be treated as privileged.]

The First Baptist Church (7th and Grand) desires to hold a September 11th memorial at the Cornerstones of Law and liberty. The details of the request are:

Four day event, beginning September 11, 1001 and ending September 14, 2002.

- Participants would read from the Bible around the clock;
- The church would supply a generator for electricity to power the amplified sound and to provide night-time lighting;
- The event would take place on the south side of City Hall "adjacent to or within the Cornerstones of Law and Liberty.";
- The speakers would use a podium, and would keep the volume of the amplified sound low to avoid disruptive effects.

Summary of the Issue: Use of the Cornerstones area or other portions of the City Hall grounds for the Church's request fits the legal definition of creating the Cornerstones area as a "limited public forum." Once the City authorizes one group or person to make such use of any part of City Hall, such area is likely legally available to any citizen or other group, for whatever message they desire.

While the City can make reasonable rules regarding "time, place and manner" of the use and speeches in a "limited public forum," the content cannot be controlled or limited in any way.

Stated another way, if any City rules for a limited public forum area have the effect of limiting or controlling what is said, the rules are unconstitutional. Rules that only control when and how and where the speech is made-- and leave the content to the speaker's discretion – are constitutional. *Caveat*: such rules must be applied with equal vigor to every possible message.

Discussion:

Reasonable "time, place and manner" rules could include:

- No amplification; only the human voice can be used to convey the message;
- Specify allowed hours of usage;
- Only some specific area of the City Hall grounds (or internal rooms and facilities) can be used;
- Limits on the use of artificial lighting.

Of course, allowing such a "limited public forum" does not mean that threats, harassing behavior, or for interference with the free and safe passage of City Hall visitors, employees and pedestrians are approved; such behaviors would continue to be illegal, with or without the creation of a "limited public forum."

A public forum can be created consciously or inadvertently over time and usage.

If a limited public forum is allowed, other requests to "speechify," even if the content is expected to be vile and obnoxious, cannot be rejected.¹

The south entrance area of the adjacent Mesa County courthouse is likely already a limited public forum: It has been used for decades as a place where anyone may express that person's views.²

These Supreme Court rules are based on the Court's interpretations of the following language of the First Amendment to the U. S. Constitution: "Congress shall make no law ... abridging the freedom of speech."

While there can be no question but that the Church has a constitutionally guaranteed right to present the speech as it proposes, the question at hand is a different question: Should such speech should occur at City Hall? Granting this request likely means that the Cornerstones area is thereafter open to

¹ "Speech" in this context means any communication, whether with words, graphics, symbols, mime, etc.

² It does not matter that no one with an obnoxious or offensive viewpoint has never used the court house steps for some extended "free speech" marathon. Given the historical use of the courthouse steps for political speeches and other community messages, that south side of the courthouse is nearly guaranteed to be viewed by the courts as a forum where people offer their thoughts on any subject at all.

"indiscriminate use by the general public." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983)³

However, a decision in 2002 to allow the proposed use of the south side of City Hall, does not mean that the decision can never be changed. The Supreme Court has only ruled that although the "state" is not required to indefinitely retain the open character of the facility, while it does, the standards for a "traditional public forum" are the rules. *Id.* A traditional public forum is one in which "by long tradition or by government *fiat* ha[s] been devoted to assembly and debate." *Id.* Sidewalks adjacent to City Hall, and the entrances from those sidewalks to the front doors are classic examples of a traditional public forum.

CC: Asst. City Attorney, Asst. City Manager, Department Heads, City Clerk

³ The word "indiscriminate" in this context means that the government cannot choose between messages that it prefers to hear and those messages (or speech) that it (or the members of Council) does not want to hear.