



TO: Mayor and Members of Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
DATE: March 1, 2005
SUBJECT: Request to Use Veterans' Plaza for National Day of Prayer Event

The City has received a request to allow the use of Veterans' Plaza for a "National Day of Prayer- Troy Judeo-Christian observance" on May 5, 2005, from 12 pm to 1 pm. The Troy Veterans' Plaza has been used for City sponsored events, and other events that are in observation of national holidays, such as Memorial Day, Police Memorial Day, and Veterans' Day. It has been used in the past for the National Day of Prayer (a national holiday), but it has never before been expressly requested as an exclusive Judeo-Christian observation. In his proclamation for National Day of Prayer 2004, President George W. Bush states:

I ask the citizens of our Nation to give thanks, each according to his or her own faith, for the freedoms and blessings we have received and for God's continued guidance and protection. I also urge all Americans to join in observing this day with appropriate programs, ceremonies, and activities.

In light of this purpose, the limitation of a National Day of Prayer-Troy to a Judeo-Christian observation on municipal property necessarily implicates First Amendment concerns. According to the First Amendment of the U.S. Constitution:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The first determinative factor is to decide whether the denominational celebration of National Day of Prayer will occur on a designated public forum. If municipal property is defined as a public forum, then the governmental entity must allow the use of the property for religious purposes, just as civic and other organizations are able to use the property. Although restrictions cannot be based on the content of the message, the municipality can impose time, place, and manner restrictions on the use of a public forum.

The City of Troy has not officially designated the Troy Veterans' Plaza as a public forum, and therefore has not yet adopted time, place and manner restrictions on the use of the forum. Upon information and belief, the Troy Veterans' Plaza has been used only in connection with the recognition of a national holiday, and has not been authorized for other uses. However, the events in the past at the Troy Veterans' Plaza have not all been City sponsored

events. For example, the Troy Veterans' Committee has organized past Veterans' Day celebrations. Based on this, there is a strong argument that the Troy Veterans' Plaza is a public forum, which should be available for all organizations to use equally. Under this scenario, there would be a First Amendment right to have an exclusively Judeo-Christian celebration of the National Day of Prayer. This is true for all speech, even when it may be considered offensive to some of the diverse citizenry of the City of Troy. Once City Council allows the Veterans' Plaza to be used in an exclusive fashion, it loses all ability to prohibit similar requests to use the property, even if these requests are made by organizations that may be offensive to some, such as the Nazi Party.

If City Council determines that the Troy Veterans' Plaza is a public forum, and can be used for an exclusive Judeo-Christian celebration of the National Day of Prayer, then it is essential that there be no endorsement of religion by the City, which is prohibited under the First Amendment to the U.S. Constitution. This would preclude City resources from being used for any non-City sponsored event at the Troy Veterans' Plaza. In the past, City staff has assisted in past celebrations on the Troy Veterans' Plaza by providing podiums, microphones, sound systems, chairs, and other miscellaneous assistance. However, if Veterans' Plaza is a public forum, available for all to use, then City resources should not be used, especially for an exclusive Judeo-Christian event. In addition, government officials, including City Council members, should be cautious to avoid allegations of government endorsement of religion. Active participation by City Council members in an exclusively Judeo-Christian event on City property may lead to allegations that the City has unlawfully endorsed religion.

As always, if you have any questions concerning the above, please let me know.

February 28, 2005

TO: The Honorable Mayor and City Council Members
FROM: John Szerlag, City Manager
SUBJECT: National Day of Prayer

Ms. Lori Wagner has submitted the attached request for approval to observe the *National Day of Prayer* in front of City Hall on Thursday, May 5, 2005 from 12:00 to 1:00 PM. Ms. Wagner proposes a Judeo-Christian agenda during this one-hour timeframe; and while other religions are welcome to attend the prayer meeting, her agenda does not permit a public forum for these other religions. Instead, she proposes that persons of a different religion submit separate requests for time slots during *National Day of Prayer*. For example, the City could allow a Judeo-Christian agenda from 12:00 to 1:00 PM; a Hindu agenda from 1:00 to 2:00 PM; a Muslim agenda from 2:00 to 3:00 PM, etc.

This format has a two-tiered approach:

- 1) From a legal perspective, can the Troy City Council permit a *National Day of Prayer* as outlined above?
- 2) If the City Attorney's Office indicates that City Council can allow the *National Day of Prayer* in the above fashion, does Council want to?

I've asked the City Attorney's Office to research question 1) and have this matter slated for the March 7 agenda.

c: Tonni Bartholomew, City Clerk
Lori G. Bluhm, City Attorney
John M. Lamerato, Assistant City Manager/Finance & Administration
Susan Lancaster, Assistant City Attorney
Cindy Stewart, Community Affairs Director
Lori Wagner, National Day of Prayer Coordinator, Troy

JS/mrVAGENDA ITEMS\2005\To M&CC Re NDP

Hi, there, Cindy!

Hope this is a better time for you now that the ball field issue is settled!

I am writing to request a spot on the agenda to obtain permission from the Council for the National Day of Prayer-Troy Judeo-Christian observance to be held at City Hall on Thursday, May 5, 2005, at noon. We appreciate the City's eleven years of support.

Please advise when this will be scheduled. Thanks for your help!

Lori Wagner
NDP Coordinator, Troy
(248) 608-1755
(248) 909-5735 (mobile)