
MEMORANDUM

DATE: July 22, 2008
TO: City Council Members
FROM: Karen Halladay, Budget and Public Policy Analyst
RE: Update - Naming Opportunities Policy – US Supreme Court Case

This memorandum is to provide information related to an upcoming U.S. Supreme Court case involving free speech and expression on items, such as, monuments, memorials, displays, etc, that are placed on public property that is considered to be a “traditional public forum” under First Amendment law (i.e. public parks, sidewalks, and streets). The Supreme Court will review the decision by the federal court of appeals for the 10th Circuit, which includes Utah, that once Pleasant Grove allowed a local group to place a “Ten Commandments” monument in a city park, it could not refuse to allow another group, Summum, to place its “Seven Aphorisms” monument in the same park based on the content of the message on the Summum monument. The Summum monument would be located next to an existing Ten Commandments monument, which was donated thirty years ago by the Fraternal Order of Eagles. On March 31, 2008, the U.S. Supreme Court agreed to hear an appeal. According to a KCPW article on March 31, 2008, the case, *Pleasant Grove City v. Summum*, is not expected to be heard until at least October of this year. The court opinion is not expected until sometime in 2009.

In addition to the Naming Opportunities Ordinance, Salt Lake City currently has the following requests which may be affected by the U.S. Supreme Court ruling:

- Rotary Glen Park – Monument at the mouth of Emigration Canyon - Sons of the Utah Pioneers (A request has also been made to put back up a historical plaque that had been removed during renovations which have now been completed.)
- Pioneer Park – Replace a lost plaque with a replica of the original – Sons of the Utah Pioneers (See Attached)
- Library Square/Liberty Park – Freedom Monument

Matters at Issue

1. Currently, the Sons of Utah Pioneers (SUP), an organization established in 1933 that has been active in building more than 250 monuments and other markers in Utah, has submitted two requests to Salt Lake City. One is for a monument at the mouth of Emigration Canyon to be located in Rotary Glen Park. The other one is to replicate and replace an original plaque on a stone marker in Pioneer Park. The Pioneer Park marker inscription is as follows: *“This monument marks the site of the old fort in which the Mormon pioneers wintered in 1847-48 and in which some of the settlers resided for several years. Brigham Young laid the foundation stones on August 10, 1847 for 4 of the 17 houses erected of logs and sun-dried mudblocks on August 11, 1847. The First adobe in the 9 foot wall was laid, the houses formed part of the wall that enclosed this 10 acre block as protection against Indians. The fort was completed in November 1847, on July 24, 1898 Pioneer Square was dedicated as a public park. The improved park was opened July 24, 1903.”* The SUP would like to dedicate the plaque in Pioneer Park on July 23, 2008. See attachment for further information regarding the Pioneer Park monument. City Administration has postponed the SUP Emigration

Canyon request until after the U.S. Supreme Court issues an opinion in the *Pleasant Grove City v. Summum* case.

In addition to the SUP requests, supporters of a Freedom Monument/Memorial want to locate a display on public property. Final details for this project, including location, have not been determined.

Is the Council concerned about Sons of Utah Pioneers and other who desire dedications/rededications of existing or future monument activities prior to the U.S. Supreme Court decision in the Pleasant Grove City v. Summum, which is expected in 2009, or would the Council prefer to wait until the Supreme Court case is decided prior to considering these requests? Please see attached information on the request for replacement of Pioneer Plaque in Pioneer Park – requested for July 23, 2008.

2. The Naming Opportunities Ordinance is currently being prepared by legal counsel.

Does Council wish to provide further direction to legal counsel with regard to the Naming Opportunities Ordinance? The Attorney's Office has noted that the property referenced in this "naming opportunities ordinance" would not necessarily be a "traditional public forum."

The Council may wish to discuss the matter of what constitutes a "traditional public forum" further.

3. The Administration receives requests from the public regarding naming opportunities and requests for monuments, memorials, etc.

Does the Council wish to provide further direction to the Administration with regard to current requests?

4. The U.S. Supreme Court is allowing amicus briefs to be submitted on its upcoming case, *Pleasant Grove City v. Summum*.

Does the Council wish to encourage the City Administration an opinion on the Pleasant Grove City v. Summum case? (filing of an amicus brief is an executive branch function) The City Attorney's Office has reviewed the case and recommended that the Administration not file an amicus brief, because while important, the issue is not critical to Salt Lake City and other parties will ensure that the issue is fully litigated.

Background Information – Court Cases Involving Monuments, Memorials, and Displays on Public Property

The Summum organization is a spiritual community which incorporated in Utah in 1975 and has resided in Salt Lake City since its establishment by Corky Ra. According to the Summum website, the bronze-colored pyramid located at 707 Genesee Avenue was originally licensed as a winery by federal and local governments. According to the website, "Today the pyramid is used to create and store the Summum Nectar Publications, it is used as a classroom for students and apprentices studying the Summum Philosophy, and it is used to conduct sacred initiations."

In September of 2003, the Summum organization requested to place a monument of similar size and nature next to an existing Ten Commandments monument in the Pleasant Grove City Park. In addition to the Ten Commandments monument, the Pleasant Grove City Park featured several other displays highlighting the City's pioneer history. In a second case, *Duchesne City v. Summum*, the Summum organization challenged a Ten Commandments monument, which was the only display placed in the Duchesne City Park. In an attempt to avoid Summum's challenge, the land on which the monument was placed was transferred first to

the Duchesne Lion's Club and then later sold to private owners. A fence was placed around the transferred land, and, a sign on the fence stated that the land did not belong to the city of Duchesne. The Summun organization requested transfer of a similar size piece of land in the park.

On April 17, 2007, the U.S. 10th Circuit Court of Appeals dealt with both of the Summun cases mentioned above, *Pleasant Grove City v. Summun* and *Duchesne City v. Summun*. In the Pleasant Grove City case, the Court held that the Summun organization was entitled to erect its monument in a park with existing monuments. According to the Court, Pleasant Grove City failed to create content-neutral restrictions on aesthetic grounds, and, the Summun's "Seven Aphorisms" monument should not be prohibited from being displayed along with the other existing monuments. In the Duchesne City case, the court determined that the initial land transfer to the Lion's Club was invalid under state law due to lack of consideration for the land transfer and also conflict of interest (the Lion's Club President was also the City's Mayor). In another attempt to keep the Ten Commandments monument in its location and to show separation of church and state, Duchesne City sold the 10-by-11 foot land parcel to the family of the monument donors for \$250. The 10th Circuit panel did not agree with the City's solution and sent it back to a lower court to determine whether the monument's location within a park constitutes a public forum and whether or not the sale to the family members is valid under state law. In August of 2007, the U. S. Court of Appeals for the 10th Circuit Court split 6-6 over a request for the full appeals court to rehear the two Utah cases. On March 31, 2008, the U. S. Supreme Court agreed to hear an appeal in the *Pleasant Grove City v. Summun* case.

Currently, national organizations and cities are submitting amicus curiae (friend of the court) briefs on the Pleasant Grove City case. Amicus briefs allow organizations to advise and weigh-in on the issue being heard by the U.S. Supreme Court. According to a Salt Lake Tribune article "*Groups weigh in on Summun Appeal*" dated June 28, 2008, "While some groups have filed briefs in support of Pleasant Grove, others have not aligned themselves with either party and instead feel the court should disallow religious monuments on municipal property altogether." Other organizations filing amicus briefs include: American Humanist Association, Anti-Defamation League, People for the American Way Foundation, Legal Liberty Institute, and cities of New York, Nashville, and Ogden.

The impending U.S. Supreme Court decision in the *Pleasant Grove City v. Summun* case expects to provide clarification and direction to cities with regard to the First Amendment - free speech and expression, use of public property, and the role of government as a facilitator of requests by individuals and/or organizations to display items on public property.

JUL 07 2008

TO: Boyd Ferguson
FROM: Rick Graham *RG*
DATE: June 3, 2008

RE: Replacement of Pioneer Plaque in Pioneer Park – Sons of the Utah
Pioneers

Recently I informed you that a Chapter of the SUP wished to replace a plaque on a stone monument that currently stands in Pioneer Park. The monument was placed years ago by the SUP. The plaque was stolen or lost several years ago. The SUP wishes to make a new plaque and install in back on the monument. This would happen during a celebration tentatively scheduled for July 23.th to coincide with the dedication of original plaque.

I told the SUP that I could not approve the placement of the new plaque until I had a review from my legal advisor. I walked the SUP through the pending court review issue.

The issue is on hold until I get back to the SUP.

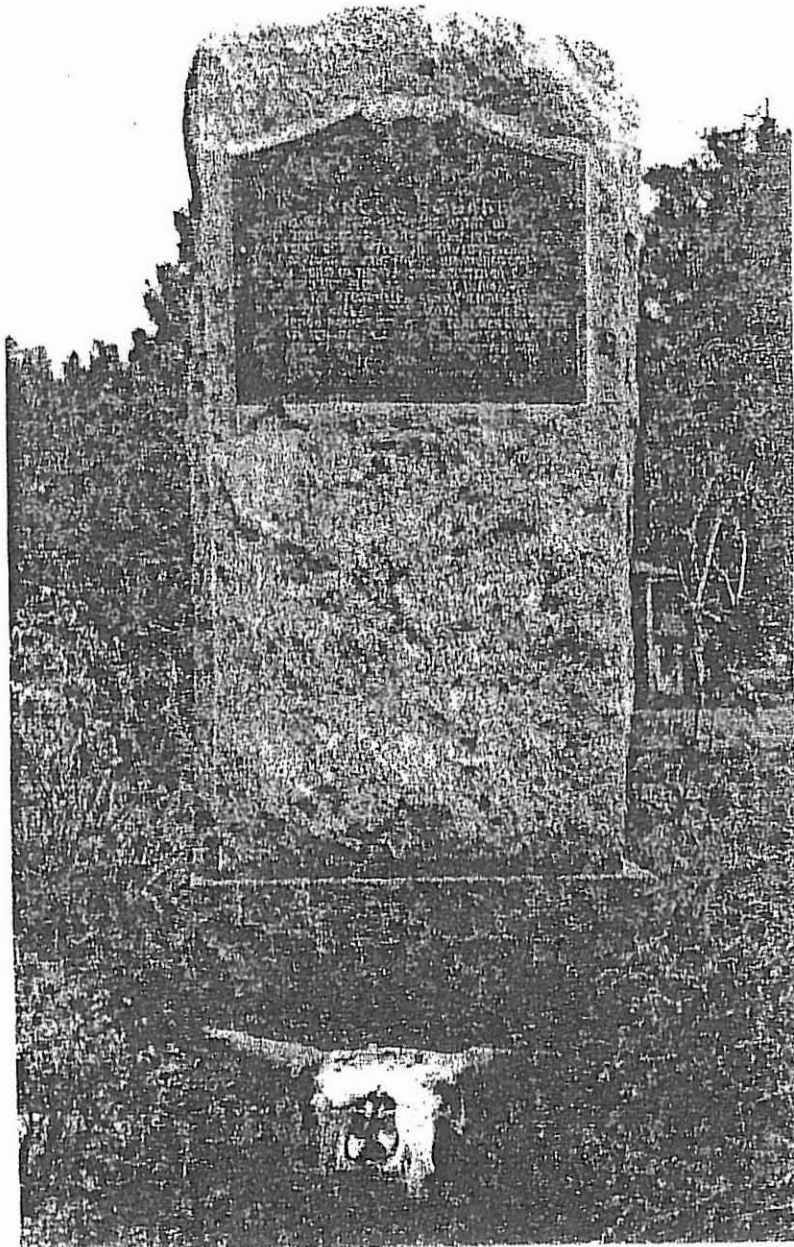
Please review the wording of the plaque. It will be identical to what was on the monument for many years.

Please advise on how I should respond to the SUP.

Thank you. Rick

Karen Halladay ✓

original marker in Park



and tennis courts, known as Pioneer Park.

On July 23, 1933, a suitable monument was erected by the Pioneer Trails and Landmarks Association and the Boy Scouts Vanguard of Pioneer Stake, in Pioneer Park, so that all who there may know something of what happened on this square over hundred years ago.

At a special conference held in the Bowery, on the Temple Block Sunday, August 22, 1847, under the Presidency of Brigham Young, city which had been commenced by the Pioneers, was named "Great Salt Lake City of the Great Basin of North America." The Post Office was named "The Great Basin Post Office."

The River Jordan and the mountain streams entering the valley from the east were also named. It was decided that if John Smith, uncle of the Prophet Joseph, came with the next company of emigrants he should preside over the Saints in the new settlement.

Four days later, Brigham Young and many other Pioneers, left the valley on their return to Winter Quarters.

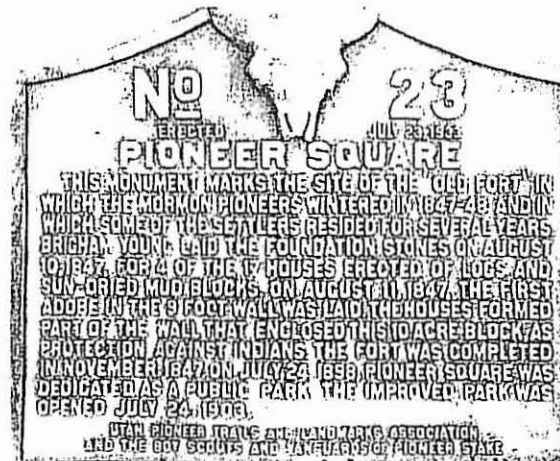
On Monday, September 6th, they met Abraham Smoot's one hundred and Brother Robinson's fifty at Pacific Springs, on which occasion John Smith was appointed to preside over the Great Salt Lake Valley at his arrival there. Members of a High Council were also named.

On Sunday, October 3, 1847, the Saints in Great Salt Lake Valley were organized into a Stake of Zion, with John Smith as President, Charles C. Rich and John Young as counselors.

In February 1849, the stake was reorganized with Daniel Spencer as President and David Fullmer and Willard Snow counselors.

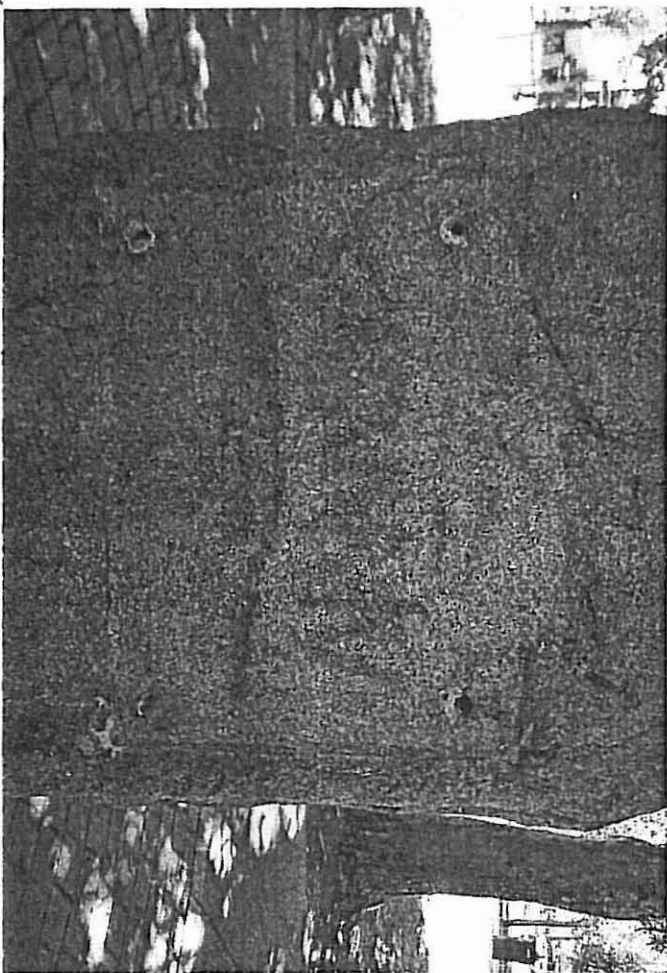
On Wednesday, February 14, 1849, Great Salt Lake City was divided into nineteen ecclesiastical Wards of nine blocks each, numbered successively one to nineteen; and on Thursday, February 22, 1849, a council meeting held in Great Salt Lake City, Bishops were ordained and set apart to preside in all of these wards with the exception of 4th, 5th, 11th and 18th.

On that date William H. Hickenlooper was ordained and set apart as Bishop of the Sixth Ward and William G. Perkins was ordained and set apart as bishop of the Seventh Ward.



Inscription on
Pioneer Park Monument

Monument in park today.



Monument in Pioneer Park today

