

FREEDOM FROM RELIGION *foundation*

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April 6, 2017

SENT VIA EMAIL & U.S. MAIL

pleach@albanyca.org, citycouncil@albanyca.org

Penelope Leach
Albany City Manager
1000 San Pablo Ave.
Albany, CA 94706

Albany City Council
1000 San Pablo Ave.
Albany, CA 94706

Re: Display of Cross on Government Property

Dear Ms. Leach and City Councilors:

I am writing once again behalf of the Freedom From Religion Foundation (FFRF) to ask the City of Albany to remove the cross from Albany Hill.

The simple fact is that the City owns a cross and displays it on government property. As outlined in our previous letter, federal courts, particularly the Ninth Circuit Court of Appeals, have repeatedly held that the government cannot display a cross on public land. The government has the right and, moreover, the duty, to rectify constitutional violations. Nothing prevents the City from doing its duty here and taking down an exclusionary symbol of one religion that it owns from public property that it owns. "Because the cross may reasonably be perceived as governmental endorsement of Christianity," as a cross prominently displayed in a public park, keeping it up "impermissibly breache[s] the First Amendment's 'wall of separation' between church and state." *Separation of Church & State Comm. v. City of Eugene*, 93 F.3d 617, 620 (9th Cir. 1996).

The Albany Lions Club's easement does not require the City to continue ownership of the cross, it merely provides for the group to have "ingress and egress to maintain the existing cross." If the City divests itself of the cross, there will no longer be an "existing cross" that the Club will need to maintain. The City is not obligated to allow a private group to maintain an exclusionary religious symbol on its property.

FFRF takes very seriously the inappropriate display of religious symbols on public property. FFRF is currently suing the city of Pensacola, Florida over a cross in a public park there. *Kondrat'yev v. Pensacola*, No. 3:16-cv-00195 (N.D. Fla. 2016). In addition, the city of Santa Clara, California, recently moved a cross out of a public park after FFRF filed suit to challenge it. *FFRF v. Santa Clara*, No. 5:16-cv-02072 (C.D. Cal. 2016). The city paid FFRF's fees of \$6,500 in the settlement. Other similar cases that did not settle as quickly have resulted in much higher costs to government entities; a Pennsylvania school district recently paid attorneys' fees of \$163,500 to FFRF after settling with FFRF in a suit over a Ten Commandments monument.

The City must take down the cross on Albany Hill. Please inform us in writing of the steps you are taking to resolve this matter.

Sincerely,



Madeline Ziegler, Esq.
Patrick O'Reiley Legal Fellow
Freedom From Religion Foundation