

# ALBANY CALIFORNIA



CITY OF ALBANY  
1000 SAN PABLO AVENUE  
ALBANY, CA 94706  
[www.AlbanyCA.org](http://www.AlbanyCA.org)

VIA E-MAIL and U.S. Mail

Scott Drumheller, CEO, Lions Club International  
Amy Pena, General Counsel, Lions Club International  
Lions Clubs International Headquarters  
300 West 22nd Street  
Oak Brook, IL 60523-8842

Dear Mr. Drumheller and Ms. Pena,

The signatories of this letter are the Mayor and all of the members of the City Council of the City of Albany, California. We are writing to ask for your help in dissuading the Albany Lions Club from initiating litigation against this small city. We are appealing to you on the basis of Lion principles set forth in your organizational literature – including community service, non-sectarianism, and constructive dispute resolution.

First, we want to say that each one of us is aware of, and grateful for, the outstanding contributions of the Lions Club to humanity, both here and throughout the world. Our appreciation of the organization deepens our dismay at finding ourselves threatened with litigation by the Albany Lions Club.

Briefly, the situation is as follows: in 1971, at a time when the great majority of the residents of our city were either Christians or from Christian family backgrounds, the Lions Club erected an illuminated Latin Cross on a parcel of land here. At the time, the land was owned by a member of the Lions Club, who was also serving on this City Council.

In 1973, through a series of transactions that became extremely controversial, the land with the cross on it was transferred to the City of Albany for use as a public park. The parcel was burdened with an easement in favor of “Albany Lions Club, Lions International, A California Non-Profit Corporation” for “ingress and egress to maintain the existing cross standing on a portion of the . . . premises”. The facts are described in more detail in a decision of the California Supreme Court, Thomson v. Call, 38 Cal 3d 637 (1985).

We believe that the cross is currently maintained by the Albany Lions Club Foundation, Inc., which we understand to be the 501c3 member of a 501c3/501c4 partnership with the Albany Lions Club.

The City of Albany has recently been approached by a local organization, the East Bay Atheists, which is concerned about the presence of a sectarian religious symbol on public land. The local group has been joined by two national organizations – Americans United for the Separation of Church and State, and the Freedom From Religion Foundation – in requesting that the cross be removed. The East Bay Atheists have raised additional issues about the safety of the cross and its electrical service line.

We have reached out to the local Albany Lions Club about these issues, and it has threatened to sue the City of Albany if we take action regarding the cross that they perceive to be in violation of their legal rights as an organization.

As a body of elected officials, we would like to be able to decide the issues surrounding the cross based on constitutional and democratic principles, rather than on litigation-risk considerations such as the potential cost of attorneys' fees. We of course intend to comply with the United States Constitution with respect to both the free exercise of religion and the separation of church and state. Apart from strictly legal considerations, we wish to be respectful of the religious sensibilities of our community, which has become a very diverse place over the years. For example, Albany is now the locale of an important local Muslim foundation and a respected Buddhist priory. Albany's Jewish community has grown significantly since the early 1970's. Members of many other faith communities – including but not limited to Hindus, Taoists, Baha'i, and Sikhs – as well as atheists and agnostics of diverse family backgrounds -- are represented here as well. The City Council wishes to avoid creating the incorrect impression that it favors or endorses any particular religion.

We hope that the Lions Club International might consider joining us in seeking to resolve this situation without resort to the judicial system. We hope your commitment to “create and foster a spirit of understanding among the peoples of the world” can be applied to support our own effort to cultivate such a spirit within our small city - and that you might be able to persuade the local chapter of your organization join in us in this effort as well.

Thank you for your consideration, we look forward to hearing from you.



Peter Maass  
Mayor



Peggy McQuaid  
Vice Mayor



Michael Barnes  
Councilmember



Rochelle Nason  
Councilmember



Nick Pilch  
Councilmember

Attachments:

Letter from Albany Lions Club Member, Bob Nichols

Letter from East Bay Atheists

Letter from Freedom from Religion Foundation

Letter from Americans United for Separation of Church and State

Cc: Mary Rynearson, Multiple District Four, Lions Club California  
Vince Lipinski, District 4-C3, Lions Club of Alameda & Contra Costa Counties  
Bob Nichols, Albany Lions Club  
Valerie Dunlap, Albany Lions Club President  
Roger Duhem, Albany Lions Club Secretary  
Richard Stellina, Albany Lions Club Treasurer  
Larry Hicok, Coordinator East Bay Atheists  
Madelline Ziegler, Freedom From Religion Foundation  
John McGinnis, Americans United for Separation of Church and State



## The Albany Lions Club

December 10, 2015

*VIA E-MAIL and U.S. MAIL*

Jeff Bond  
Community Development Director  
City of Albany  
1000 San Pablo Avenue  
Albany, California 94706

**RE: Albany Hill Cross**

Dear Mr. Bond:

This letter is written on behalf of the Albany Lions Club in response to your recent letter of December 7, 2015, and your prior letter dated November 24, 2015.<sup>1</sup> This letter also follows verbal discussions with Fire Chief Lance Calkins, City Manager Penelope Leach and you. Unfortunately, the City's position appears to have changed at least three times since the first contact on November 13<sup>th</sup>. Consequently, the Albany Lions Club is not certain how to respond to the City's changing demands.

### *The Atheists' Assertions*

It appears the City of Albany's concerns about the cross on Albany Hill stem from a letter written by the "East Bay Atheists" which claimed (1) the cross's foundation was eroded; (2) two of the four mounting bolts [attaching the cross to the foundation] are broken; and (3) the utility line is running through the branches of a tree. It is my understanding that the City has determined the Atheists' allegations regarding the cross foundation and the bolts securing the cross to the foundation are completely unfounded. The only remaining issue is the electrical utility line. We are pleased your most recent letter abandoned the threat of abating the cross as a public nuisance.

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<sup>1</sup> The letter dated November 24, 2015, addressed to Art Longpre was meter stamped November 25, 2015, and not delivered until December 3, 2015. This letter was particularly troubling because it was received nine (9) days after it was written and demanded a response within ten (10) days.

Jeff Bond  
December 10, 2015  
Page 2 of 7

### *The Electrical Utility Line*

The communications received by the Lions from various persons at the City of Albany concerning the electrical utility line powering the cross have lacked specificity as to the legal authority for the City's request. The communications have also leaped to several conclusions which may or may not be correct.

First, the City appears to have taken the position that the Albany Lions Club and not the utility are responsible for the placement and care of the utility line. In briefly researching the issue it appears that the utility is responsible for the line from the pole to the point of the electrical meter where the electrical service is connected. The electrical meter and electrical service is located inside the cross. This issue does not appear to have been fully explored by the City.

Second, your letter of November 24, seems to imply that the 1971 utility connection to the cross did not comply with the applicable electrical code. If this is indeed your contention would you please provide us with a copy of the City approved edition of the electrical code applicable to the 1971 cross installation and utility line placement? We are particularly interested in knowing how the line fails to comply with the 1971 code. However, if the City is relying on a subsequently enacted code or regulation, would you provide reference to the specific code section including the authority making that enactment applicable retroactively to existing structures?

Third, your letter of November 24, indicates the problem with the utility line is that it "runs through the branches of a eucalyptus tree" and that broken tree branches "could bring down the electrical line." This hardly appears to be a unique problem in the City of Albany. In a brief drive through the City, we observed numerous instances where electrical utility lines ran through city street trees and trees located on private property. Within the last few years PG&E conducted a "Line Clearance Program" intended to eliminate tree branches damaging electrical lines. Perhaps the simplest solution to current Albany Hill Cross matter would be for the City to trim its tree branches away from the utility line.

Finally, it may be possible to relocate the utility line away from the tree without the construction of an intermediate pole. It appears possible that the utility line itself may



Jeff Bond  
December 10, 2015  
Page 3 of 7

be shortened and realigned removing excess slack such that the line does not go through the tree branches or require a pole.

In light of the forgoing it is not apparent that the City has not considered all of the available options that may be available to resolve this matter. The City may also have erroneously concluded that the Lions Club as the responsible entity for repairing the utility line.

***The Construction of an Intermediate Pole between the Cross and Utility Pole***

On November 19, 2015, Fire chief Lance Calkins visited the Albany Lions Club and discussed the City's concerns regarding the cross.<sup>2</sup> It was at the Chief's suggestion that the Club construct an intermediate utility pole. Following some discussion, the Albany Lions Club, acting as good citizens and desirous of maintaining the cross in an undisputedly safe manner, agreed to accede to the City's request for an intermediate pole.<sup>3</sup> The Club authorized Mr. Art Longpre to identify and engage a contractor. The Club also appropriated funding for the construction of the intermediate utility pole and for the utility line relocation. In the course of those discussions Chief Calkins represented that a permit for the pole could be issued in one day.

In subsequent telephone conversations City Manager, Penelope Leach, continued to urge an intermediate pole as the City's preferred option. Ms. Leach reiterated that a permit for pole construction could be issued by you (Mr. Bond) on the same day. Ms. Leach was informed that Mr. Longpre was seeking to engage a contractor for the purpose of installing the intermediate pole and relocating the utility line. Mr. Longpre visited Albany City Hall, met with you and Ms. Leach and presented specifications for

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<sup>2</sup> The Chief confirmed that despite allegations by third parties, the base of the cross is structurally sound and the cross is well secured to its base. The Chief's statements were subsequently confirmed by City Manager Penelope Leach.

<sup>3</sup> The Albany Lions Club's willingness to construct a pole is not, and does not constitute a statement, acknowledgement or admission that any dangerous condition or violation of any code or regulation exists; and any such condition or violation is specifically denied. The Club also disputes responsibility for the utility line running between the pole and the service meter.

Jeff Bond  
December 10, 2015  
Page 4 of 7

the intermediary pole to the City.<sup>4</sup> It was our hope that a pole could be manufactured, and installed shortly after the New Year, if not sooner, weather permitting. We were surprised and disheartened by your letters of November 24, and December 7. It now appears that despite prior representations of a desire to quickly resolve this issue, with a one day turn-around the City is placing additional impediments in the process to resolve of the matter.<sup>5</sup>

### *The Lions Application to Construct a Pole is Not a Request to Install a New Service*

Your letter of December 7, 2015, states that the Lions Club is seeking to install a “. . . **new electrical service** to the Lion’s Club cross. . . .” This statement is false and incorrect. A **new** electrical service is not being sought. The cross is now and has since 1971 been connected to electrical services and no changes are anticipated. The only action taken by the Lions Club has been an application to construct a pole, at the City’s request, to slightly realign the utility wire. All discussions with the City have been exclusively limited to the movement of the utility wire a few feet away from tree branches, and the construction of a pole. At no time was the installation of a “new service” ever discussed or considered. We do not believe and do not agree the process of moving the utility line a few feet will require any interruption of electrical service or result in any alteration to the existing service.

### *The Albany Lions Club’s Property Rights*

As you know the Albany Lions Club possesses an easement for ingress, egress and maintenance of the Albany Hill Cross. That easement predates the City’s acquisition of the property. The cross is electrically lighted and powered by an electrical utility connection. That utility power line is an intrinsic and fundamental component of the electrically lighted cross. Maintenance of the utility wire as well as the ingress and egress of the electricity that lights the cross all fall within the Lions Club’s easement.

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<sup>4</sup> A pole would have to be specially ordered and manufactured to act as an intermediary utility pole. Prior to incurring the expense of ordering and such a pole Mr. Longpre sought to assure the pole would meet all of the City’s requirements and specifications.

<sup>5</sup> We note that some of the East Bay Atheists materials expressed a strategy of requiring the costs of correction or repair to exceed the willingness and ability of the Lions Club to comply. We have serious concerns that the City may be intentionally or unwittingly attempting to adopt this strategy.



Jeff Bond  
December 10, 2015  
Page 5 of 7

The City's actions as set out in your letter are in contravention of Lions Club's property rights. In other words, if according to the City, a pole is absolutely necessary for the maintenance of the utility line, despite 44 years to the contrary, the Lions Club easement constitutes a property right that allows the Club to install such a pole as a part of maintaining the cross; subject to compliance with all applicable building codes.

### *City Abuse of Building Code Enforcement Authority*

In the letter of December 7, you state that the City Council will need to "evaluate the impacts of the pole on **City property**." You refer to this City Council review as a "policy level decision." Clearly, this step goes well beyond the mere issuance of a building permit which does not require any policy interpretation or adoption. You are apparently suggesting the City Council is considering the condemnation, limitation, restriction or other similar actions that will interfere with the Lions Club's property rights associated with the cross. We strongly object to the City's misuse of building code enforcement authority in any attempt to condemn, limit or restrict or devalue the Lions Club's easement.

The City Council approval plan you outline in your letter is a sham. Generally, issuing a building permit for minor issues such as a utility pole is an administrative function and does not require City Council approval.<sup>6</sup> The initial statements of Chief Calkins and City Manager Leach further evidence that only administrative review was contemplated. Under your proposal the City's enforcement authority is being used as a pretext to usurp property rights under the mantle of building code compliance.

The December 9, letter also requests a site plan and section drawings showing the pole and overhead lines. This request appears to be an unnecessary expense intended to introduce additional cost and delay in this process. A visual examination of the Albany Hill topography makes the claimed need for evaluation of impacts laughable. You are undoubtedly aware that the existing utility service wire intersects the hill at the location of a steep slope. The ground is only passable on foot with extraordinary effort. The existing utility line extends well above the sloping ground; an intermediary pole will only maintain this height. Similarly, a utility pole will not materially alter the existing

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<sup>6</sup> We note that PG&E has been replacing poles in Albany. Can you provide us with copies of the City Council actions approving the replacement of those poles?



Jeff Bond  
December 9, 2015  
Page 6 of 7

conditions or interfere with the City's use, or lack thereof, of this portion of the property in any significant manner whatsoever.

We had previously understood the City was desirous of a prompt resolution of this matter. In response the Lions Club took extraordinary steps to expedite the process of locating a contractor, researching available posts and developing specifications for your consideration. Your letter now suggests that significant delay will be required by the City to issue a construction permit for a pole, if a pole is in fact required. Nonetheless we remain prepared to move quickly once the City responds to our intermediate pole proposal.

We sincerely hope the City is not delaying this matter to obtain a strategic advantage. Any attempt to interrupt the electrical power or disconnect the utility line as we work through this issue would cause us to consider immediate legal action. We have previously stated that we demand due process before any interruption of service or utility disconnection occurs. Similarly, any City action that limits, restricts, disrupts, or otherwise interferes with the lighting of the cross or its use and enjoyment will also cause us to consider prompt legal action.

***Subjecting the Lions Club to Dispirit and Unequal Treatment***

We have noticed that the City's position has changed from politely requesting the Lions construct a utility pole and move a utility line pursuant to the City's representations of a same day permit approval; to the multi stage process with technical specifications including City Council approval set out in your most recent letter. The stewardship of the Albany Hill Cross is of great importance and the Albany Lions Club will fight to protect the cross and its easement. The Club will be very sensitive to any attempt remove, limit, restrict, inversely condemn, or otherwise interfere with its property rights.

Similarly we are concerned that the City of Albany may have singled out the cross on Albany Hill because it is a religious symbol. Building permits are regularly and administratively issued by your department almost daily. You may wish to consider

Jeff Bond  
December 9, 2015  
Page 7 of 7

many times in the past five years had the City Council approved a mere building permit? How many other instances of utility wire enforcement has the City undertaken in the past five years and how those were resolved? I am sure we agree that equal protection prohibits the City of Albany from singled out the Albany Hill Cross or the Lions Club for prosecution by the building department merely because the cross is a religious symbol. Similarly is the City creating special requirements merely because the permit involves a cross?

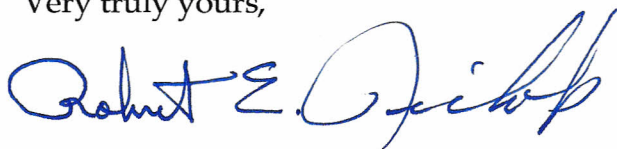
### *Conclusion*

The Albany Lions Club, without admitting any responsibility, liability, or violation of law, remains willing to accede to the City's initial demand and construct intermediate pole and move the utility line such that it is no longer in contact with tree branches as the City has requested. We have already submitted a proposal to the City that should accomplish this goal. We are also willing to consider any reasonable modification to our submission and will work diligently to promptly install the requested pole.

If the City believes a meeting with staff, including the City Attorney might be beneficial in reaching a prompt and reasonable resolution of this matter we would be pleased to meet. If the City of Albany is interested in holding such a meeting, please have counsel contact me at 510 526-6259 to arrange a time and date for such a meeting.

We look forward to a prompt and reasonable resolution of this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Robert E. Nichols". The signature is fluid and cursive, with the first name "Robert" being the most prominent.

Robert E. Nichols  
Direct Albany Lions Club

CC: Valerie Dunlap, President, Albany Lions Club  
Art Longpre, Director, Albany Lions Club  
Penelope Leach, City Manager, City of Albany

## An Open Letter to the City of Albany

My name is Larry Hicok, and I am the Coordinator of East Bay Atheists and the Northern California Director of American Atheists. I am also a former resident of Albany, living for ten years on Ventura Street. A number of our members are also current or former residents.

I and others have complained to the city about the cross in Albany Hill Park a number of times over the years, only to have our complaints dismissed by "It's on private property." Two years ago several of us carefully inspected the cross, and found it to be extremely unsafe and in violation of many basic codes and safety standards. Yet the cross is in the middle of a city park at a key position on the hiking trail/fire road that runs through the park.

While past communications with the city have left us frustrated and feeling ignored, we realize that there are many well-meaning members of city government who we think will do the right thing if they understand the extent of the problem.

### Code Violations

The 110 volt wiring to the cross is illegally attached to a small tree to support it. This is a violation of Article 230.10 of the National Electrical Code. The swaying of the tree in the wind could create a break in the wire. According to the National Wildfire Coordinating Group (NWCG), "It is common for energized electrical wires to start fires when they fall into dry grass."

("The National Wildfire Coordinating Group (NWCG) provides national leadership to develop, maintain, and communicate interagency standards, guidelines, qualifications, training, and other capabilities that enable interoperable operations among federal and non-federal entities.")

[http://training.nwcg.gov/classes/s130/508%20Files/071231\\_s130\\_m4\\_508.pdf](http://training.nwcg.gov/classes/s130/508%20Files/071231_s130_m4_508.pdf) )

The cross's foundation is extremely eroded, and two of the four mounting bolts are broken off. If the cross falls, it could easily start an electrical fire.

These problems are documented with images at <http://eastbayatheists.org/albanyhillcross.html>. At the top of the webpage is a link for thumbnails that expand into full resolution photos revealing much detail.

East Bay Atheists' volunteers distributed 850 flyers to residences on Albany Hill on Saturday, November 7th, describing the problem and urging them to contact the Fire and Community Development Departments. Residents were clearly concerned about the fire danger, especially in view of the forest of Eucalyptus trees engulfing the hill. These trees are notorious for extreme wildfires.

**All of these violations should be addressed expeditiously; however the live wire feeding the cross should be disconnected at the PG&E pole immediately. This would remedy the most severe danger: an electrical fire.**

### Private Property Meme

This cross is on city property, not private property. The land was gifted to the city for a park, on the condition that it included an easement for the cross and the Lion's Club to maintain it. In return the city allowed the landowner to sell the property to condo developers, the result of which is the Gateway condo complex on the west side of Albany Hill.

The California Supreme Court ruled in 1985 on the lawsuit dealing with the transfer of the park land to the city. Here is a description of a key ruling by a Stanford Law review:

"Addressing the potential establishment clause problem raised by the city's acquisition of property burdened with a cross, the court found that the acquisition had a secular purpose and effect (use by the public as a park), that acceptance of the land neither advanced nor inhibited religion, and that it did not constitute excessive governmental entanglement with religion or violation of the First Amendment."

The review makes clear that the land was still city property, "burdened with a cross."

<http://scocal.stanford.edu/opinion/thomson-v-call-30730>

We have collected three images, one from Google Maps satellite view, and two from the Alameda County Assessor's Office, documenting that the property on which the cross sits is still city property.

<http://eastbayatheists.org/publicproperty.html>

We strongly urge the Albany City Council to take leadership in remedying these violations on city property endangering nearby residents and others.

Larry Hicok, November 12, 2015



# FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 • MADISON, WI 53701 • (608) 256-8900 • WWW.FFRF.ORG

January 12, 2016

**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 on behalf of the Freedom From Religion Foundation (FFRF) to object to the display of a cross on public property. We were contacted by a concerned local resident. FFRF is a national nonprofit organization with more than 23,000 members across the country, including over 3,000 members in California and a chapter in Sacramento. Our purpose is to protect the constitutional principle of separation between state and church.

It is our understanding that a large Latin cross sits on government property at the summit of Albany Hill. We understand that the cross is lit at Easter and on other occasions. We also understand that the land the cross sits on was donated to the government in the 1970's, and that it is currently in disrepair. We are informed that there are safety issues with the cross's wiring and its foundation.

I am writing to ask you to promptly remove this religious symbol from public property because it violates the Constitution.

The religious significance of the Latin cross is unambiguous and indisputable. "The Latin cross . . . is the principal symbol of Christianity around the world, and display of the cross alone could not reasonably be taken to have any secular point." *Capitol Square Review and Advisory Bd. v. Pinette*, 515 U.S. 753, 792 (1995) (Souter, J., concurring). An overwhelming majority of federal courts agree that the cross universally represents the Christian religion, and only the Christian religion. *See, e.g., Harris v. City of Zion*, 927 F.2d 1401, 1412 (7th Cir. 1991) ("a Latin cross . . . endorses or promotes a particular religious faith. It expresses an unambiguous choice in favor of Christianity."), *cert. denied*, 505 U.S. 1218 (1992); *ACLU of Ill. v. City of St. Charles*, 794 F.2d 265, 271 (7th Cir. 1986) ("When prominently displayed . . . the cross dramatically conveys a message of governmental support for Christianity, whatever the intentions of those responsible for the display may be. Such a display is not only religious but sectarian."), *cert. denied*, 479 U.S. 961 (1986).

The Ninth Circuit Court of Appeals, which has jurisdiction over California, has held displays of Latin crosses on public property to be an unconstitutional endorsement of religion. *See, e.g., Trunk v. San Diego*, 629 F.3d 1099 (9th Cir. 2011), *cert. denied*, 132 S.Ct. 2535 (2012); *Separation of Church and State Comm. v. City of Eugene*, 93 F.3d 617 (9th Cir. 1996); *Buono v. Norton*, 371 F.3d 543, 550 (9th Cir. 2004); *Carpenter v. City and Cnty. of San Diego*, 93 F.3d 627, 632 (9th Cir. 1996); *see also Friedman v. Bd. of Cnty. Comm'rs*, 781 F.2d 777 (10th Cir. 1985) (en banc); *ACLU v. Rabun Cnty.*

*Chamber of Commerce*, 698 F.2d 1098 (11th Cir. 1983); *ACLU v. Eckels*, 589 F. Supp. 222 (S.D. Tex. 1984).

The circumstances in *Separation of Church and State Comm. v. City of Eugene* are very similar to the facts here. In that case, private individuals put up a large, lit cross in a donated public park. The Ninth Circuit held that there was “no question that the Latin cross is a symbol of Christianity, and that its placement on public land by the City of Eugene violates the Establishment Clause.” 93 F.3d at 620. Despite the involvement of private citizens, “The maintenance of the cross in a public park by the City of Eugene may reasonably be perceived as providing official approval of one religious faith over others.” *Id.* at 619.

I understand that the land where the cross sits was the subject of litigation in a 1985 California Supreme Court case. *Thompson v. Call*, 38 Cal. 3d 633, 214 Cal. Rptr. 139, 699 P.2d 316. The cross’s constitutionality was not at issue in that case, and while the Supreme Court recounted a lower court’s opinion of the cross, it itself did not offer any opinion on the cross’s constitutionality, even in passing.

The government’s permanent display of a Latin cross on public land is unconstitutional. The inherent religious significance of the Latin cross is undeniable and is not disguisable. No supposed secular purpose could detract from the overall message that the Latin cross stands for Christianity and that the display promotes Christianity. The display of this patently religious symbol on public property confers government endorsement of Christianity, a blatant violation of the Establishment Clause.

The illumination of the cross at Easter and Christmas compounds the problem by suggesting that the City of Albany is celebrating Easter, a wholly religious holiday, and the religious aspects of Christmas. The Supreme Court has stated: “The government may acknowledge Christmas as a cultural phenomenon, but under the First Amendment it may not observe it as a Christian holy day by suggesting people praise God for the birth of Jesus.” *Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter*, 492 U.S. 573, 601 (1989).

The cross unabashedly creates the perception of government endorsement of Christianity. It conveys the message to non-Christians, including the one in five Americans who are not religious, that they are not “favored members of the political community.”<sup>1</sup> *Id.* at 594. The cross has an exclusionary effect, making non-Christian and non-believing residents of Albany Hill political outsiders.

Decades of federal case law, as well as safety concerns, dictate that the city must remove the cross from Albany Hill. Please inform us in writing of the steps you are taking to resolve this matter.

Sincerely,



Madeline Ziegler  
Cornelius Vanderbroek Legal Fellow  
Freedom From Religion Foundation

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<sup>1</sup> “America’s Changing Religious Landscape, Pew Research Center (May 12, 2015), available at [www.pewforum.org/2015/05/12/americas-changing-religious-landscape/](http://www.pewforum.org/2015/05/12/americas-changing-religious-landscape/).



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1901 L Street, NW  
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January 13, 2016

**By Email & U.S. Mail**

Peter Maas, Mayor  
Peggy McQuaid, Vice Mayor  
Michael Barnes, Council Member  
Rochelle Nason, Council Member  
Nick Pilch, Council Member  
Albany City Council, c/o City Clerk  
1000 San Pablo Avenue  
Albany, CA 94706  
citycouncil@albanyca.org

Penelope Leach, City Manager  
1000 San Pablo Avenue  
Albany, CA 94706  
pleach@albanyca.org

*Re: Latin Cross in Albany Hill Park*

Dear Council Members and Ms. Leach:

We have received a complaint that the City of Albany is displaying a large Latin cross in Albany Hill Park. We understand that the 25-foot cross is located in the middle of the city-owned park and features fluorescent lighting to illuminate the cross for special occasions, including Christian holidays such as Easter. The Establishment Clause of the First Amendment to the U.S. Constitution prohibits the government from promoting religion or particular religions on public land. Please remove the Latin cross from government property.

The display of a Latin cross on government property violates basic Establishment Clause rules. Governmental entities are prohibited from taking any action that communicates “endorsement of religion.” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 305 (2000), and must maintain “governmental neutrality ... between religion and nonreligion.” *McCreary Cnty. v. Am. Civil Liberties Union*, 545 U.S. 844, 860 (2005) (quotation marks omitted).

Because the Latin cross is “the preeminent symbol of Christianity,” *Trunk v. City of San Diego*, 629 F.3d 1099, 1110–11 (9th Cir. 2011), *cert. denied*, 132 S. Ct.

2535 (2012), courts have repeatedly prohibited governmental bodies from displaying Latin crosses on public land. The U.S. Court of Appeals for the Ninth Circuit, whose decisions govern California, prohibited the government from displaying a cross as part of a veterans' memorial, because the cross "conveys a message of government endorsement of religion that violates the Establishment Clause." *Id.* at 1125. And the U.S. Court of Appeals for the Tenth Circuit prohibited Utah from displaying crosses to honor fallen highway patrol officers, because the practice "convey[s] to a reasonable observer that the state ... is endorsing Christianity." *Am. Atheists, Inc. v. Davenport*, 637 F.3d 1095, 1121 (10th Cir. 2010), *cert. denied* 132 S. Ct. 12 (2011); *see also, e.g., Separation of Church & State Comm. v. City of Eugene*, 93 F.3d 617, 619 (9th Cir. 1996) (solitary cross in public park "clearly represents governmental endorsement of Christianity"); *Am. Civil Liberties Union of Ill. v. City of St. Charles*, 794 F.2d 265, 272 (7th Cir. 1986) (placement of lighted cross atop City fire department "unmistakably signifies Christianity").

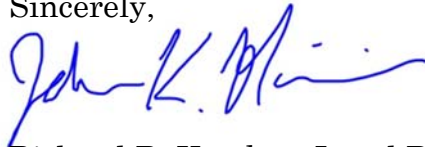
Even more recently, a federal court in California prohibited the City of Lake Elsinore from displaying a proposed monument that portrayed a soldier kneeling before a Latin cross. *See Am. Humanist Ass'n v. City of Lake Elsinore*, No. 5:13-cv-989-SVW-OPx, 2014 WL 791800 (C.D. Cal. Feb. 25, 2014). "Because of the Latin cross's strong ties to Christianity," the court explained, "courts have almost unanimously held that its effect is to communicate that the display as a whole endorses religion." *Id.* at \*13.

We recently obtained a similar result in a lawsuit challenging a local government's display of a Latin cross. In *Hewett v. City of King*, 29 F. Supp. 3d 584 (M.D.N.C. 2014), the city had displayed a statue at its veterans memorial that contained a Latin cross. In sending the case to trial, the district court observed that "most of the current jurisprudence analyzing the Latin cross, in light of asserted Establishment Clause violations, is all but decidedly against the [city's] position." *Id.* at 619. The city later agreed to remove the statue and paid \$500,000 in costs and attorneys' fees to the plaintiff. *See* Nicholas Elmes, *King City Council Votes to Settle Flag Lawsuit, Remove Statue*, Stokes News, Jan. 7, 2015, <http://tinyurl.com/ng8wcnk>. The City of Albany would risk a similar outcome if the Albany Hill cross is not removed.

Please remove the cross from government property. We would appreciate a reply to this letter within thirty days. If you have any questions or would like to discuss this issue further, you may contact John McGinnis at (202) 466-3234 or [mcginnis@au.org](mailto:mcginnis@au.org).



Sincerely,

A handwritten signature in blue ink, appearing to read "John K. McGinnis". The signature is fluid and cursive, with a prominent initial "J" and a long, sweeping underline.

Richard B. Katskee, Legal Director  
Gregory M. Lipper, Senior Litigation Counsel  
John McGinnis, Legal Fellow