

# FREEDOM FROM RELIGION *foundation*

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December 6, 2017

SENT BY EMAIL AND U.S. MAIL TO: [vgennaro@bakersfieldcity.us](mailto:vgennaro@bakersfieldcity.us)

Virginia Gennaro  
City Attorney  
City of Bakersfield  
1600 Truxtun Avenue  
Bakersfield, California 93301

Dear Ms. Gennaro:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to alert you to constitutional concerns regarding the city's Christmas Tree Lighting Ceremony. FFRF is a national nonprofit organization with approximately 30,000 members nationwide, including more than 3,500 in California and a chapter based in Sacramento. Our purposes are to protect the constitutional principle of separation between state and church and to educate the public on matters related to nontheism.

A city resident informed us that the City of Bakersfield hosted its first annual tree lighting ceremony at Centennial Plaza on November 25, 2017. The event apparently included a live nativity "courtesy of Canyon Hills Church."<sup>1</sup> Councilwoman Jacquie Sullivan promoted the city event while speaking to local media, stating:

"We're celebrating and recognizing the true meaning of Christmas, which is the nativity scene. So, the first family—the holy family—will be there. So, it's a good balance and truly represents the true history and the true meaning of Christmas."<sup>2</sup>

We write ensure that future city celebrations will not promote a Christian event.

It is inappropriate for the city to organize, host, and lend its name to a Christmas event that features a live nativity scene, thus placing the imprimatur of the City of Bakersfield behind Christian religious doctrine. This excludes the nearly 30% of citizens who are not Christian—Jews, Muslims, Native American religion practitioners, etc.—including the 23% of Americans who are nonreligious.<sup>3</sup>

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<sup>1</sup> *Bakersfield Hosts Christmas Tree Lighting Ceremony Saturday*, [www.kerngoldenempire.com/news/local-news/bakersfield-hosts-christmas-tree-lighting-ceremony-saturday/861913803](http://www.kerngoldenempire.com/news/local-news/bakersfield-hosts-christmas-tree-lighting-ceremony-saturday/861913803) (last visited Dec. 5, 2017).

<sup>2</sup> *Id.*

<sup>3</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/).

In addition to sending a message to non-Christians and the nonreligious that they are outsiders in their own community, including a live nativity scene in a city event may also be unconstitutional. See *Cty. of Allegheny v. ACLU of Pittsburgh*, 492 U.S. 573 (1989); *Lynch v. Donnelly*, 465 U.S. 668 (1984). In *Allegheny* the Supreme Court held that a county government's crèche displayed in the county courthouse was an unconstitutional endorsement of religion. The Court stated:

*Lynch v. Donnelly* confirms, and in no way repudiates, the longstanding constitutional principle that government may not engage in a practice that has the effect of promoting or endorsing religious beliefs. The display of the crèche in the county courthouse has this unconstitutional effect.

492 U.S. at 621. The Court found that government display of a nativity scene "sends an unmistakable message that it supports and promotes the Christian praise to God that is the crèche's religious message." *Id.* at 600. The inherently Christian live nativity in the city's Christmas celebration similarly sends the message that the city endorses the religious beliefs embodied in the nativity.

The live nativity is apparently sponsored by a local church, as was the crèche in *Allegheny*, yet city officials promote it as part of the city's holiday celebration, which it invites the community to take part in. Local churches who wish to host a live nativity may organize and host their own event, and either hold it on private property or rent government facilities, like any other private group. While we acknowledge that private parties may rent the plaza or other city property pursuant to a valid permitting process, under the Constitution the city cannot endorse the religious messages of those groups.

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*, 492 U.S. at 601. Councilwoman Sullivan's remarks make plain a religious purpose for including a live nativity in the city's holiday event—celebrating the birth of Jesus as the "true history and true meaning" of Christmas. This goes beyond what is permissible in a city-sponsored holiday celebration.

Please ensure that future holiday celebrations hosted by the city celebrate the diversity of its religious and nonreligious community, rather than unconstitutionally endorsing one specific religious creed. If private sponsors wish to host an exclusively Christian event, they are free to do so, but not with the endorsement of the City of Bakersfield. We ask that you respond in writing, outlining the steps that the city is taking to remedy this matter. Thank you for your time and attention.

Sincerely,



Elizabeth Cavell  
Associate Counsel