

# FREEDOM FROM RELIGION *foundation*

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September 22, 2014

**SENT VIA U.S. MAIL AND EMAIL:** [cityadministrator@oaklandnet.com](mailto:cityadministrator@oaklandnet.com)

Henry Gardner  
Interim Oakland City Administrator  
City Administrator's Office  
1 Frank Ogawa Plaza, 3rd Floor  
Oakland, CA 94612

Re: Unconstitutional Religious Display

Dear Mr. Gardner:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to object to religious displays on Oakland public property. We received a complaint from a concerned resident. FFRF is a nationwide nonprofit organization with over 21,000 members across the country, including more than 3,300 in California, as well as a chapter in Sacramento. We protect the constitutional principle of separation between state and church.

It is our information and understanding that there is a Buddhist shrine at the intersection of East 19th Ave and 11th St in Oakland. We understand that the shrine has grown over the years and was originally installed by Dan Stevenson (not a Buddhist) in 2009. We understand that Mr. Stevenson did this to lessen littering, graffiti, and public urination. Now there are regular worship services, food offerings, and a temple-shelter constructed over the shrine. These worship services often spill into the street, with worshippers sitting in the roadway.

Also nearby, at the intersection of 12th Ave and 20th St, there is a Quan Am Tu Shrine.

The display of these patently religious symbols on public property confers government endorsement of religion. It endorses religion over nonreligion, Buddhism over all other faiths. Allowing religious shrines to a depiction of Buddha on public land clearly has a primary effect of advancing religion. Many people go to the shrines to pray and give religious offerings.

Federal courts, including the 9th Circuit Court of Appeals, have held displays of religious symbols 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*, WL2368746 Jun. 25, 2012 (No. 11-998, 11-1115); *Carpenter v. City and County of San Diego*, 93 F.3d 627,632 (9th Cir. 1996); *Friedman v. Bd. of County Comm'rs*, 781 F.2d 777, 778 (10th Cir. 1985) (en banc); *ACLU v. Rabun County Chamber of Commerce*, 698 F.2d 1098, 1111 (11th Cir. 1983); *ACLU v. Eckels*, 589 F. Supp. 222, 241 (S.D. Tex. 1984). Even though these cases involve the display of a Latin cross, the display of other sectarian religious images on government property also violates the Establishment Clause.

Under binding precedent, the shrine and religious displays are unconstitutional. The Ninth Circuit Court of Appeals ruled that a privately-erected cross on public property was unconstitutional. *Separation of Church & State Comm. v. City of Eugene*, 93 F.3d 617 (9<sup>th</sup> Cir. 1996)(per curiam). The cross, located in a public park on a butte, “clearly represent[ed] governmental endorsement of Christianity.” *Id.* at 620. The Ninth Circuit recently reaffirmed this principle in *Trunk v. City of San Diego*, 629 F.3d 1099 (9<sup>th</sup> Cir. 2011), *cert. denied*, 132 S. Ct. 2535 (U.S. 2012). A large cross on Mount Soledad was unconstitutional because a “reasonable observer would perceive the Memorial as projecting a message of religious endorsement,” despite its claimed use as a war memorial. *Id.* at 1118. If a cross that has some secular association is unconstitutional, surely an exclusively religious shrine is unconstitutional.

It is irrelevant that private citizens erected the shrines. The City is responsible for shrines, monuments, and other items that are on public lands that it manages. In *Buono v. Norton*, 371 F.3d 543 (9<sup>th</sup> Cir. 2004), the Ninth Circuit Court of Appeals held that a cross sitting on *public* land was unconstitutional, even though it had been placed there by private citizens. The Tenth Circuit Court of Appeals found crosses on government land to be an unconstitutional government endorsement of Christianity. *See American Atheists, Inc. v. Duncan*, 637 F.3d 1095 (10<sup>th</sup> Cir. 2010), *cert. denied*, 132 S. Ct. 12 (U.S. 2011). The crosses were unconstitutional despite the fact that the crosses were privately funded, owned, and maintained and the private agency retained the right to remove them at any time. *Id.* The court further found that the religious memorials were unconstitutional even though the state agency that allowed the religious memorials stated that they “neither approve[d] or disapprove[d]” of the memorials. *Id.*

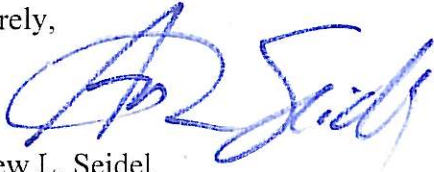
As a legal matter, it is settled that such permanent displays on public land are government speech. *See e.g., Pleasant Grove City v. Summum*, 555 U.S. 460, 470 (2009). As permanent fixtures, observers understand that the shrines are sanctioned and approved by the City. The Supreme Court noted that “although some public parks can accommodate and may be made generally available for temporary private displays, the same is rarely true for permanent monuments,” and that looking at a park as a public forum is generally not appropriate in the case of permanent monuments. *Id.* at 480. The Court instead found that “[p]ermanent monuments displayed on public property typically represent government speech.” *Id.* at 470. Permitting the shrines to stand in Oakland may be seen as the City ratifying their placement and content, which runs afoul of the Establishment Clause.

The shrines, while helping minimize littering, or at least the appearance of litter (that people are cleaning up more does not necessarily mean people are actually littering less), pose a safety risk for the city. A worshipper kneeling in public roadways meant for cars is a recipe for disaster. The more popular the shrine, the more likely a car will collide with a pedestrian.

We understand and sympathize with the community’s desire to keep the monument. But there are ample private grounds where religious displays may be freely placed. And if there is truly a desire to have a display on government property, let it be a secular display, not religious. Once the government enters into the religion business, preferring one religion over others, it weakens religious liberty, forcing taxpayers of all faiths and of no religion to support a particular expression of worship.

We ask the City to begin the process of finding new homes for the shrines. Local residents or other volunteers who support keeping the shrines ought to be willing to move them to their property, or perhaps other, more appropriate private locations. We ask for a prompt response in writing informing us of the steps the City will take to resolve this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. L. Seidel", written in a cursive style.

Andrew L. Seidel  
Staff Attorney