

CITY OF COOS BAY CITY COUNCIL
Agenda Staff Report

MEETING DATE April 2, 2013	AGENDA ITEM NUMBER
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TO: Mayor Shoji and City Councilors

FROM: Rodger Craddock, City Manager *RC*

ISSUE: Mingus Park Veterans Memorial

BACKGROUND:

The April 10, 1972 City Council meeting minutes reflects that two members of the local Jaycees (Bay Area Jaycees) addressed the Council. They asked for the Council's support (approval) on five projects they proposed to conduct in Mingus Park. Those projects included the following:

1. Constructing bleachers and an outfield fence at the ball park.
2. Cleaning of Mingus Lake.
3. Organizing the annual Salmon Festival
4. Enlarging the facilities in upper Mingus Park.
5. Erecting a Vietnam War Memorial.

The July 24, 1972 City Council meeting minutes reflects that the Council approved a resolution commending the Bay Area Jaycees for their recent work in Mingus Park. A representative of the Jaycees thanked various community organizations for their donations of materials which were used to complete their projects.

The September 19, 1972 City Council meeting minutes reflects that the City Manager reported to the Council that there had been three areas of complaints regarding the "war memorial" in Mingus Park which were as follows:

1. "Symbol of the cross affixed to the memorial"
2. "Location"
3. "Some citizens claim it is unattractive (ugly)"

"After considerable discussion, it was decided to inform the Jaycees of the objections received to date and possible future objections, in the hope the Jaycees could resolve the problem themselves. No official action was taken."

Fast-forward to October 19, 2010 when Landy Marshall a former member of the Bay Area Jaycees who had helped construct and install the memorial, appeared before the City Council and requested that the City rehabilitate the memorial as the finish had deteriorated over the years due exposure to the weather.

During the summer of 2011, city staff attempted to clean the memorial by pressure washing it. The pressure washing failed to make any visible improvements.

During the summer of 2012, city staff contracted with Brock Concrete to resurface the memorial by pressure grouting a thin layer of grout over its exterior at a cost of \$485.00.

On August 21, 2012 Mayor Shoji received a concern from a resident of Myrtle Point and a member of the South Coast Secular Society who thought the recently refinished memorial was new and “a clear violation of separation of church and state.”

On February 7, 2013, I received a letter from the Freedom from Religion Foundation (FFRF) regarding the memorial. The author advised that their organization had been contacted by some of their “Oregon members regarding the cross.” In their letter, the FFRF asserted that the memorial is unconstitutional because of the presence of the cross; and, as such, they requested immediate removal of the “cross from the park.”

Listed on FFRF's website, FFRF commonly sends letters like the one received by the City in hopes of persuading public entities in correcting what they have determined to be unconstitutional displays of religious displays on public property. In addition to sending letters, FFRF asserts that it has filed more “than 40 First Amendment lawsuits since 1977 and keeps several Establishment law challenges in the courts at all times.”

Since the news release of FFRF's request and the probable lawsuit against the City should the Council not comply with their request, staff have received a number of communications (phone calls, letters, and emails) from interested persons and organizations from across the country. While some believe that the memorial is unconstitutional because of its location and of the cross which is situated at the top of the memorial, others want the Council to leave the memorial in its current shape and where it is currently located. In addition, others have suggested alternative options for the Council's consideration. These options are categorized as follows:

- Sell, donate, or lease a small section of property around the memorial thereby it would no longer be construed as unconstitutional as it would not be on “public property.” The local American Legion Post 34 is one such organization who has offered to take custody the property and to care for the memorial.
- Leave the memorial at its current location, but remove the cross or replace the entire memorial with a secular memorial.
- Move the memorial onto private property. The City has received two offers; one from the board of directors of the Prayer Chapel on Commercial Avenue, and the second from the owner of the Ocean View Memorial Gardens, to place the memorial on their property. While the properties are privately owned, they are open to the public.

The matter before you is not only a highly emotional one, but it is fraught with potential litigation. While the City is insured through City / County Insurance (CIS), litigation of this nature may or may not be covered under our policy depending on specifics of the lawsuit. The City received offers from three different law firms specializing in constitutional law offering to defend the City on pro bono basis should the City be served with a lawsuit. While this is the case, none of the firms will indemnify the City. Thus the City would still face

financial jeopardy (damages and repayment of the prevailing attorney fees) should a lawsuit occur and the City loses at trial. Two of the firms have offered to assess the relevant facts involving the memorial in Mingus Park at no cost to the City and to advise the Council on its options.

ACTION REQUESTED:

It is staff recommendation (the City Attorney and I) that after taking public comments tonight that the Council consider the offer to have a legal assessment of the relevant facts involving the memorial in Mingus Park by subject matter experts. I further recommend that the Council consider and discuss this option in Executive Session as this is a matter of potential litigation.

FREEDOM FROM RELIGION *foundation*

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

February 7, 2013

SENT VIA U.S. MAIL & ELECTRONIC MAIL

rcraddock@coosbay.org

Rodger Craddock
City Manager
City of Coos Bay
500 Central Ave
Coos Bay OR 97420

Re: Display of Cross on Government Property

Dear Mr. Craddock:

I am writing on behalf of the Freedom From Religion Foundation ("FFRF") to alert you to an unconstitutional display of a cross on public property. FFRF was contacted by its concerned Oregon members regarding this cross. FFRF is a nationwide nonprofit organization, which works to protect the constitutional principle of separation between state and church. FFRF represents over 19,000 members across the country, including over 600 in Oregon.

It is our information and understanding that Mingus Park is a city park within the city limits of Coos Bay, Oregon. Our complainants inform us that a large white cross sits in the park near a playground. Please find enclosed a picture of this cross. We further understand that a small plaque accompanies the display and reads:

"DEDICATED TO THE MEN WHO GAVE THEIR LIVES IN THE
VIETNAMESE WAR DONATED BY WESTERN BANK – BAY AREA
JAYCEES"

Our complainants further inform us that this display has been in the park for several decades. There also have been recent efforts to restore the cross.

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 agrees that the Latin cross universally represents

the Christian religion, and only the Christian religion. See, e.g., *Separation of Church and State Comm. v. City of Eugene*, 93 F.3d 617, 620 (9th Cir. 1996) (“There is no question that the Latin cross is a symbol of Christianity, and that its placement on public land...violates the Establishment Clause”); *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).

A majority of federal courts 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*, WL2368746 Jun. 25, 2012 (No. 11-998, 11-1115); *Buono v. Norton*, 371 F.3d 543, 550 (9th Cir. 2004); *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). All of the aforementioned cases involved the display of a Latin cross in public parks.

In *Trunk v. San Diego*, the Ninth Circuit Court of Appeals, which encompasses Oregon, struck down the display of a forty-three foot cross as part of a war memorial atop Mt. Soledad in La Jolla, California. See 629 F.3d 1099. The Ninth Circuit reiterated that “[this] sectarian war memorial carries an inherently religious message and creates an appearance of honoring only those servicemen of that particular religion.” *Id.* at 1101 (quoting *Ellis v. City of La Mesa*, 990 F.2d 1518, 1527 (9th Cir. 1993)). The court also reasoned that “a sectarian war memorial carries an inherently religious messages and creates an appearance of honoring only those servicemen of that particular religion.” *Id.* at 1112 (quoting *Ellis*, 990 F.2d at 1527). It significantly noted that a cross “is ‘not a generic symbol of death’ but rather ‘a *Christian* symbol of death’... a reasonable observer would view a memorial cross as sectarian in nature.” *Id.* The court ultimately concluded “...a reasonable observer would perceive the Memorial as projecting a message of religious endorsement, not simply secular memorialization.” *Id.* at 1118. Thus, the cross memorial “primarily conveys a message of government endorsement of religions that violates the Establishment Clause.” *Id.* at 1125.

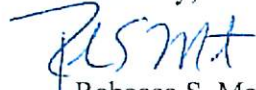
The inherent religious significance of the Latin cross is undeniable and is not disguisable. No secular purpose, no matter how sincere, will detract from the overall message that the Latin cross stands for Christianity and the overall display promotes Christianity. The display of this patently religious symbol in a city park confers government endorsement of Christianity, a blatant violation of the Establishment Clause.

We have no objection to veterans’ memorials. Our objection is to the message of endorsement of Christianity over other religions and over nonreligion. Additionally, the Christian-only memorial sends a message that the government only cares about the deaths

of Christian soldiers, not Jewish, other non-Christian, and nonreligious soldiers. This "sponsorship of a religious message is impermissible because it sends the ancillary message to...nonadherents 'that they are outsiders, not full members of the political community and accompanying message to adherents that they are insiders, favored members of the political community.'" *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309-10 (2001) (quoting *Lynch v. Donnelly*, 465 U.S. at 668) (O'Connor, J., concurring). These nonadherents include the nearly 800,500 non-Christians in Oregon and the 23.4% of military personnel who identify as atheist or agnostic or have no religious preference (American Religious Identification Survey, 2008; 2010 MAAF study based on Department of Defense data).

It is unlawful for Coos Bay to display a patently religious symbol such as a Christian cross on public property. We ask you to remove the cross from the park immediately or direct the display be moved to a more appropriate private location. We would also appreciate a prompt response from you, 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 "RS Markert", is written over the typed name.

Rebecca S. Markert
Staff Attorney

Enclosure

cc: Mayor Crystal Shoji
City Attorney Nate McClintock

