

David Slarskey
(212) 658-0661
dslarskey@slarskey.com

July 25, 2018

Mr. James M. Palmer
Village Administrator
200 Pondfield Rd.
Bronxville, NY 10708

Re: Chabad Jewish Center of Bronxville / Menorah Lighting 2018

Dear Mr. Palmer,

I represent Chabad Jewish Center of Bronxville (“Chabad”) in connection with Chabad’s prior applications (i) to erect a menorah at Bronxville Village Hall, in proximity to Bronxville’s other holiday displays including a large, lighted Christmas tree, and (ii) to conduct a menorah-lighting event at that location during the holiday season. Please consider this letter as such a request for the 2018 holiday season. We are bringing this application to you with ample time to clarify the Village’s position, so that we may resolve any dispute over whether such a display and event is appropriate.

In past years, the the Village of Bronxville has denied Chabad’s requests for a menorah display and lighting ceremony. Bronxville has provided various reasons for denying those requests, including (i) “if we permit one organization to use Village Hall space for gatherings, we must do the same for all,” and thus no extra-governmental activities are purportedly permitted at Village Hall (or in its proximity); (ii) Bronxville “does not believe it is appropriate for it, as a governmental entity, to conduct a Menorah lighting ceremony”; and (iii) Bronxville and its mayor are “constitutionally prohibited” from participating “in a religious ceremony.” Bronxville has denied Chabad’s requests in their entirety, despite the fact that Bronxville annually permits the display of Christmas-themed holiday decorations at Village Hall and a large, lighted Christmas tree at Leonard Morange Park. Moreover, Bronxville’s mayor routinely participates in an annual Christmas-tree lighting ceremony (complete with the attendance of a joyful Santa Claus!) to celebrate the holidays.

Bronxville’s denials of Chabad’s applications cannot be sustained under law.

As an initial matter, “where the government’s act of recognition or accommodation is passive and symbolic, any intangible benefit to religion is unlikely to present a realistic risk of establishment.” *County of Allegheny v. Am. Civ. Liberties Union Greater Pittsburgh Ch.*, 492 U.S. 573, 662 (1989), *abrogated on other grounds by Town of Greece, N.Y. v. Galloway*, 134 S Ct 1811 (2014). There is no real risk that permitting Chabad to erect a menorah at Village Hall would be viewed as “an effort [by Bronxville] to proselytize or [is] otherwise the first step down the road to an establishment of religion.” *Id.* at 664. This is especially true in Bronxville, a community that has traditionally not been dominated by Jewish residents, whose government is

far from captive to the Jewish community, and which has historically displayed a large, lighted Christmas tree and other holiday decorations on its property. With respect to the erection of a menorah, the Village of Bronxville need not be involved at all -- Chabad would clearly mark the menorah as sponsored by Chabad Jewish Center of Bronxville. Nor would the Village, itself, need to conduct the lighting ceremony; Chabad would host it. With respect to the Village, the display and lighting would be purely “passive and symbolic,” and thus would not run afoul of the Establishment Clause. *County of Allegheny*, 492 U.S. at 662.

But moreover, it is firmly-established that “[t]he necessary result of placing a menorah next to a Christmas tree is to create an ‘overall holiday setting’ that represents both Christmas and Chanukah -- two holidays, not one,” and that “if [a] city celebrates both Christmas and Chanukah as secular holidays, then its conduct is beyond the reach of the Establishment Clause.” *Id.* at 615. Indeed, “it would be a form of discrimination against Jews to allow [a city] to celebrate Christmas as a cultural tradition while simultaneously disallowing the city’s acknowledgment of Chanukah as a contemporaneous cultural tradition.” *Id.* The combined display of a Christmas tree and a menorah “simply recognizes that both Christmas and Chanukah are part of the same winter-holiday season, which has attained a secular status in our society.” *Id.* at 616. Thus, erecting a menorah alongside of the Village’s Christmas tree and other holiday decorations, and having the Mayor attend a menorah lighting as part of her overall celebration of the holidays, would be perfectly compatible with the Establishment Clause and Constitutional requirements. Indeed, it is a form of discrimination to erect a Christmas tree on public property at (or nearby) Village Hall, and for the Mayor to attend other holiday and Christmas parties, while refusing to permit the menorah or to attend a menorah-lighting on the grounds that it is legally impermissible to do so.

Following *County of Allegheny*, municipalities have widely-recognized the appropriateness of displaying a menorah on public property as part of a secular holiday celebration, particularly when the town or city also displays Christmas trees, lights, wreaths, and other symbols typical of the holiday season. *See, e.g., Chabad of Mid-Hudson Val. v City of Poughkeepsie*, 76 A.D.3d 693, 697 (2d Dept 2010) (“reject[ing] the ... contention that the display of the menorah on public property amounts to an endorsement of religion”); *Elewski v City of Syracuse*, 123 F.3d 51, 53 (2d Cir 1997) (purpose of menorah and other holiday displays was not religious, but “to bring the community together to celebrate the holiday season”). “Includi[ng] a religious symbol in a holiday display that unquestionably serves the secular purpose of pluralism” does not run afoul of the Establishment Clause. *Skoros v. City of New York*, 437 F.3d 1, 27 (2d Cir. 2006).

To that end, as Chabad has previously pointed out in its rejected applications, Bronxville’s neighboring communities in Westchester -- including the towns of Bedford, Briarcliff, Eastchester, Larchmont, Mamaroneck, Scarsdale, Tuckahoe, the River Towns, White Plains, and Yonkers -- all recognize the legal and cultural status of a menorah display, approving and celebrating such displays rather than rejecting them. Bronxville stands alone in refusing to permit Jewish participation in secular holiday displays celebrating the sanctity of divinity, the light of the winter holiday season, and the Constitutional values of religious pluralism and freedom.

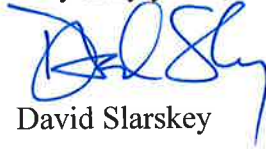
This year, Chanukah begins on Sunday, December 2 and runs through Monday, December 10. Chabad would like a permit to erect a menorah at Village Hall from November 26, 2018 through

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January 4, 2019, and would like to conduct a public menorah-lighting ceremony at the same location on Tuesday, December 4. Please confirm that Bronxville will permit the display and celebration, and we will be pleased to work out the details with you. In the alternative, we will take such action as is necessary to secure such rights. Should we determine it is necessary to proceed in the courts, we will seek costs and reasonable attorney fees associated with such action.

Please do not hesitate to contact me if you would like to discuss this matter. My phone number is (212) 658-0661, and I can also be reached at (917) 388-3274.

Very truly yours,



David Slarskey