

THE RUTHERFORD INSTITUTE

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July 28, 2026

By email to:

Hon. Rex Buzzett, Mayor
City Commissioners
Jim Anderson, City Manager
305 Cecil G. Costin Sr. Blvd.
Port St. Joe, FL 32456

Re: Proposed Cross Display at 420 Reid Avenue

Dear Mayor Buzzett, Members of the City Commission, and City Staff:

For more than 40 years, The Rutherford Institute has helped individuals and government officials navigate disputes involving constitutional rights, religious expression, land-use rules, and public safety.¹

We are not legal counsel for Mr. Todd Ashabrunner, who we understand is separately represented, nor do we write on his behalf or presume to resolve every factual or legal question that may have arisen between the parties. Rather, we write as a concerned civil liberties organization hoping to share some of the perspective gained from decades of helping citizens and public officials find workable solutions when constitutional rights and legitimate regulatory concerns intersect.

In our experience, the best resolutions are usually reached when the parties begin with what they share rather than what divides them.

That approach seems especially appropriate here.

From what we understand, neither the City nor Mr. Ashabrunner opposes a safe installation, compliance with reasonable structural requirements, respect for individual rights, or a resolution that preserves goodwill within the community.

This matter should therefore be easier to resolve than the growing controversy might suggest.

¹ The Rutherford Institute, a nonprofit civil liberties organization based in Charlottesville, Virginia, defends those whose constitutional rights have been violated. For more than 40 years, The Rutherford Institute has defended the rights of individuals and organizations to practice their religion free from government influence and interference.

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Our Understanding of the Situation

According to public reporting, Mr. Ashabranner wishes to install an approximately 18-foot cross on his private property at 420 Reid Avenue. He is an experienced builder and does not appear to dispute that a structure of this size must be properly designed, anchored, inspected, and maintained. Likewise, the City has a legitimate responsibility to ensure that structures erected within its jurisdiction satisfy applicable safety requirements so that they do not fall over and injure someone or damage property.

We understand that Mr. Ashabranner submitted a building permit application and supporting materials relating to the proposed installation. The City subsequently advised that the application was incomplete and requested that he execute a Hold Harmless Agreement and Special Exception Request Application. The disagreement appears to have arisen not principally over whether the cross should be safely installed, but over how it should be characterized in the City's paperwork and how broadly Mr. Ashabranner should be required to indemnify the City.

As a Christian, Mr. Ashabranner reportedly believes that describing the cross merely as a "sign" fails to recognize its religious character and meaning. He also objects to executing an agreement that he believes could require him to assume responsibility for matters beyond his own conduct or that of those performing the installation.

We recognize that the City may use the word "sign" as a regulatory classification rather than as a judgment about the cross's religious significance. Nevertheless, where different terminology could permit the City to conduct the same neutral safety review without asking Mr. Ashabranner to assent to a characterization that conflicts with his sincere beliefs, that accommodation seems worthy of serious consideration.

The Common Ground

The City of Port St. Joe and Mr. Ashabranner appear to share the same essential objectives: a safe installation, compliance with the law, protection of individual rights, and a resolution that preserves goodwill within the community.

Viewed in that light, this appears to be less a fundamental conflict between religious liberty and public safety than a disagreement over terminology, paperwork, and the scope of an indemnification agreement.

Those are matters that reasonable people should be able to resolve.

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Legal Principles Guiding a Resolution

Against that background, several legal principles may provide useful guidance as the City considers a reasonable path forward.

The First Amendment to the U.S. Constitution protects both the freedom of speech and the free exercise of religion. As the U.S. Supreme Court has explained:

These Clauses work in tandem. Where the Free Exercise Clause protects religious exercises, whether communicative or not, the Free Speech Clause provides overlapping protection for expressive religious activities. That the First Amendment doubly protects religious speech is no accident. It is a natural outgrowth of the framers' distrust of government attempts to regulate religion and suppress dissent.²

Federal and state laws also protect the rights of religious expression beyond the protections provided under the First Amendment, even in zoning and land use regulations. The federal Religious Land Use and Institutionalized Persons Act ("RLUIPA") provides that

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution (A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest.³

The term "government" applies to and includes "a State, county, municipality, or other governmental entity created under the authority of a State."⁴ And Congress explicitly noted within the law itself that the law is to "be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution."⁵

² *Kennedy v. Bremerton Sch. Distr.*, 142 S.Ct. 2407, 2421 (2022) (internal citations omitted) (citing A Memorial and Remonstrance Against Religious Assessments, in Selected Writings of James Madison 21, 25 (R. Ketcham ed. 2006)).

³ 42 U.S.C. § 2000cc(a)(1).

⁴ 42 U.S.C. § 2000cc-5(4)(A)(i).

⁵ 42 U.S.C. § 2000cc-3(g).

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Another protection is provided by Florida’s Religious Freedom Restoration Act, which similarly provides:

The government shall not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, except that government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person:

- (a) Is in furtherance of a compelling governmental interest; and
- (b) Is the least restrictive means of furthering that compelling governmental interest.⁶

Likewise, the term “government” and “state” includes any branch, department, agency, instrumentality, or official or other person acting under color of law of the state, a county, special district, municipality, or any other subdivision of the state.⁷

While the City might be able to impose some reasonable content-neutral time, place, and manner restrictions on certain signs and structures,⁸ the City should keep these laws and values in mind to accommodate religious expression whenever possible.

Also, as the City’s own ordinance appropriately provides, “no sign or sign structure shall be subject to any limitation based upon the content (viewpoint) of the message contained on such sign or displayed on such sign structure.”⁹

These protections do not prevent the City from applying legitimate, neutral safety requirements to a substantial freestanding structure. They do, however, counsel in favor of accommodating sincere religious expression when the City’s safety objectives can be achieved through a less restrictive and mutually acceptable administrative approach.

The Hold Harmless Agreement

Another issue that may be preventing resolution is the scope of the City’s proposed Hold Harmless Agreement. The City’s ordinance provides that:

The owner and/or lessee shall agree as part of the city's approval to hold harmless and indemnify the city, its officers, agents and employees, against any and all claims of negligence resulting from such work.¹⁰

⁶ Fla. Statute § 761.03(1).

⁷ Fla. Statute § 761.02(1).

⁸ See, e.g., *City of Austin, Texas v. Reagan Natl. Advert. of Austin, LLC*, 596 U.S. 61 (2022).

⁹ City of Port St. Joe Land Development Regulation Code, Art. VI, Sec. 6.9(4).

¹⁰ City of Port St. Joe Land Development Regulation Code, Art. VI, Sec. 6.9(7).

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Indemnification requirements may be appropriate when they require a permittee to indemnify the government only for the permittee's own misconduct undertaken in connection with the permit; such as if a permittee negligently constructs a walking path and the permittee's negligence injures a guest, then the permittee might have to indemnify the government if the injured guest sues and recovers damages from the government.¹¹

But the City's proposed Hold Harmless Agreement seems to go beyond the scope of that and beyond the scope of its own ordinance by broadly requiring the following:

Every Contractor, Trades Person, Homeowner Contractor, Contractor's employees, or related business entity who conducts business within the City shall resume all responsibility and save the City and its employees free and harmless from any prosecution or liability for any damages to any persons or property in anyway connected with, arising of, or incidental to construction related activities, building inspections, or enforcement of any code violation.¹²

We respectfully encourage the City to review whether the scope of the proposed agreement is authorized by its ordinance and consistent with applicable Florida law.¹³

A more narrowly tailored Hold Harmless Agreement—limited to claims arising from the acts or omissions of Mr. Ashabranner, his contractor, or those performing only this specific installation related to the permit—would appear to protect the City's legitimate interests without requiring him to assume responsibility for broader matters.

A Practical Path Forward

A practical accommodation should be possible that respects both concerns.

This should not have to become an adversarial or highly legalistic dispute.

The City's approach should be consistent with the First Amendment's overlapping protections for religious exercise and religious expression. It should also reflect the principle

¹¹ See, e.g., *Gmeiner v. Kent*, No. 25-2000, 2026 WL 1998638 (6th Cir. July 10, 2026).

¹² City of Port St. Joe, Building Department, Hold Harmless Agreement
<https://www.cityofportstjoe.com/pdf/building/201202083455.pdf>

¹³ Insofar as that Agreement is deemed consistent with the ordinance, then the ordinance could possibly be preempted by Florida Statute § 768.28 which waives sovereign immunity; if so, the ordinance could potentially be in violation of Florida Statute § 56.112(2), which prohibits enforcing an ordinance which is expressly preempted by state law.

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embodied in federal and Florida law that government should avoid substantially burdening religious exercise when a less restrictive means is available.

The City's own ordinance likewise provides that signs and sign structures should not be subject to any limitation based on the content or viewpoint of their message.

We also encourage the City to revisit the proposed Hold Harmless Agreement.

We understand why the City would seek reasonable protection against claims arising from a property owner's or contractor's own work. However, the current form appears broader than the indemnification language in the City's ordinance and could be read to shift responsibility for other matters as well.

Narrowing the agreement would remove another unnecessary obstacle while still protecting the City's legitimate interests.

This is the kind of disagreement that can become far more contentious—and far more public and expensive—than the underlying facts warrant.

That would be unfortunate for everyone involved.

Port St. Joe is known for its coastal charm, Southern hospitality, small-town values, and tradition of neighbors working through differences in a practical and respectful manner.

Allowing a disagreement that appears capable of resolution through reasonable terminology and properly tailored paperwork to become a prolonged public dispute could overshadow those qualities.

It could also create the mistaken impression that public safety and religious liberty are necessarily at odds.

A cooperative solution would allow the City to demonstrate that it takes structural safety seriously while also respecting the sincere religious convictions of a local property owner.

It would also reinforce the values for which Port St. Joe is known: fairness, hospitality, common sense, and a willingness to find a reasonable path forward.

We therefore respectfully encourage the City to continue working directly with Mr. Ashabranner and his counsel to identify the specific safety documentation genuinely needed for approval, agree on appropriate terminology, and develop a narrowly tailored indemnification agreement which is lawful in its scope.

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In practical terms, this should come down to the right words on the right forms—not a choice between public safety and religious liberty.

For the sake of all involved, we hope the City will help bring this matter to a prompt and amicable resolution.

For freedom,
The Rutherford Institute

CC: Todd Ashabranner