

# MAHWAH POLICE DEPARTMENT

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July 20, 2017

Quentin Wiest  
Business Administrator  
Township of Mahwah  
475 Corporate Drive  
Mahwah, New Jersey 07430

*Sent via e-mail*

**Re: Ban on Use of Township Parks by Out of State Residents  
Ordinance 1806 revised**

Dear Mr. Wiest,

I am corresponding in regards to concerns with the introduction and passing of Ordinance # 1806 specifically 9-1.3 b which states *"The Township's parks and play grounds are open to the public and may be used by New Jersey residents only."*

It is my understanding that this applies only to Township owned parks and out of state residents can still visit and use some services at the Mahwah Public Library or visit the Mahwah Museum without any restrictions but are prohibited from using any Township parks and/or playgrounds.

I understand the legal right of Council to enact laws and it is our responsibility to enforce the law as written but this latest revision of 9-1.3 requires additional clarification.

The proposed signage contains verbiage which is different from the Ordinance. The Ordinance reads parks and playgrounds are open to New Jersey residents and does not list any



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exceptions. The signage includes exceptions that "guest of a resident are permitted" and "employees of local businesses are permitted". We have elements or exceptions to the Ordinance that are being included on the posted signs but not part of the written Ordinance

that is enacted by governing body. If these exceptions were discussed and authorized by Council I believe they should have been included in the actual Ordinance so there is no misunderstanding. One of the exceptions listed on the sign says guests are allowed. Is it only one guest per resident or more? For example, would a grandparent be allowed to bring several of their grandchildren who reside out of State to a Township park on just one. I have been advised that Officers must use discretion and certainly they would and can use discretion in determining whether to issue a warning or an actual Ordinance violation but they do not have discretion to let some out of state residents stay and tell others to leave. Clearly that would be applying the law in what could be perceived and argued as enforcement in an unequitable and discriminatory fashion.

Typically Officers make an observation of a law and/or Ordinance being violated and then take the appropriate action to enforce the law based upon that observation and probable cause. For example if an Officer observes an individual holding an alcoholic beverage that is clearly a violation and an Officer can advise them of the violation, ask the individual for identification and take the appropriate action. If we are called to a Township park and/or playground I don't know of any discernible observation that can be made which would have an Officer believe someone is not a State resident and that is problematic in an enforcement sense. In New Jersey bias based profiling is prohibited under New Jersey Attorney General Guidelines and Officers cannot take action, detain someone or otherwise single them out based on the race, religion or outward appearance. In addition individuals are not obligated to carry identification to use a public park nor do they have to display their identification in a park if they are not doing anything wrong. For out of state residents who work in local businesses and according to the sign are allowed to use our parks there is no statutory obligation for them to carry any sort of company ID.

While not under my purview I am equally concerned about some of the postings on Facebook that elected Township officials have made about this issue. In one post an elected Official talks about the parks and playgrounds being closed to out of State residents and then five sentences later in the same thread posts about taking measures to stop the ERUV's from being installed in the Township. The ERUV's are linked to one specific religion and posting about the ERUV's and the new Ordinance regarding parks in the same post would lead a reasonable person to conclude or argue that there is a relationship between actions being taken by our

governing body as it relates to ERUV's and the new restrictive Park Ordinance. That, I believe, has very serious implications. I have no control on elected officials social media postings but if those postings give the impression or appearance this Ordinance is designed to a specific group because of race or religion it becomes problematic in terms of enforcement and potential bias based profiling complaints.

There are also enforcement questions I have previously asked but have not been answered as well as some new ones:

1. Ramapo College students regularly use Continental Soldier's Field. Are these individuals allowed to use the park? Many of these students live outside the state of New Jersey. Typically residency is determined by the state of the issued driver's license or where income tax returns are filed. College students permanent residence is usually not Ramapo College.
2. Are individuals from out of state prohibited from visiting or buying merchandise at Field of Creams and then sitting in the park to consume the food?
3. Members of the Ramapough Lenape tribe also use facilities at Continental Soldier's Field. If their permanent residence is not 95 Halifax Road are they allowed to use Continental Soldier's Field?
4. Are exceptions going to be made for events such as Mahwah Day etc. and how is that going to be noticed to individuals?

While these details may seem to be questioning the minutia, this is obviously a sensitive topic in our community and in the last few days we have received citizen complaints that are clearly based on prejudice in terms of individuals or groups using our parks and playgrounds. I can only expect these calls to increase once the Ordinance goes into effect.

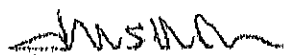
Officers receive training and are guided by a written policy on bias based profiling which is in accordance with New Jersey State Attorney General Guidelines. I expect and mandate that our Officers adhere to these guidelines.

Our agency stands ready to enforce any Ordinance in a fair and impartial manner consistent with accepted guidelines. Our parks and playgrounds are used by hundreds and hundreds of individuals each and every day and there is no discernable method that I am aware of to provide Officers with a factual basis to reasonably conclude that an individual is not a

resident of the State of New Jersey. Making any type of conclusion or detaining an individual based upon race, religion or any other protected class is strictly prohibited.

Since the Ordinance takes effect on July 27<sup>th</sup>, 2017 I would some appreciate legal guidance within the next week on enforcement related issues to prevent or minimize any litigation or complaints of bias based profiling.

I await your reply.



James N. Batelli

Chief of Police

cc: William Laforet, Mayor