

# MAHWAH POLICE DEPARTMENT

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JAMES N. BATELLI, CHIEF OF POLICE

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July 24, 2017

Gurbir Grewal  
Bergen County Prosecutor  
100 Eisenhower Drive  
Paramus, New Jersey 07652

Dear Prosecutor Grewal,

I am writing in regards to a recently enacted Township Ordinance (#1806) which the governing body has tasked our agency to enforce. The introduction of the Ordinance was on June 8<sup>th</sup>, 2017, the Public Hearing was on June 29<sup>th</sup>, 2017 and it becomes effective on July 27<sup>th</sup>, 2017. The Ordinance restricts the use of the parks to residents of New Jersey and bars residents from out of state to use our parks. The section of the Ordinance that is applicable simply states:

*The use of the Township's parks and playgrounds are open to the public and may be used by New Jersey residents only.*

I have expressed my concerns to the Township governing body and the Township Attorney about the enforcement of this Ordinance and how the actions of Officers trying to enforce the Ordinance may violate bias based profiling guidelines (see attached correspondence). I have pointed out that there is no discernible observation that can be made which would lead an Officer to believe that a person using one of our parks is not a resident of the State of New Jersey. The Ordinance does not provide any neutral criteria for Officers to use as a basis for their actions to either ask an individual for their identification or where they live. The Ordinance essentially leaves our officers little other choice other than to ask for identification for no reason or for impermissible reasons and opens the door for civil based litigation and/or Internal Affairs complaints.



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This comes during a particularly sensitive time for our community as the Township has also decided to prohibit the installation of ERUV's in our community. ERUV's are an urban area enclosed by a wire boundary that symbolically extends the private domain of Jewish households into public areas, permitting activities within it that are normally forbidden in public on the Sabbath. In recent months there has been a noticeable increase in members of the Hasidic faith using our Township parks and playgrounds and once government officials made the community aware of the pending Ordinance we started receiving calls from residents complaining that individuals of the Hasidic faith were in our parks who were not residents of the State of New Jersey. I do not know how they determined these individuals were not residents of the State. Fortunately since the Ordinance was not yet enforceable we did not dispatch patrol officers to address these complaints. My main concern is that once the Ordinance becomes law and we receive complaints there is no observation our Officers can make that would allow us to fairly and impartially enforce the Ordinance. Clearly approaching an individual based upon their appearance and/or clothing would violate guideline for bias based profiling.

It has also been observed the elected officials have been commenting on social media about both the ERUV installation and the park and playground restrictive Ordinance in the same post which could bring into question the motivation and agenda behind the Ordinance which our Officers are expected and tasked to enforce. I have no control on what is being said on social media, but what I am concerned about is that based upon social media postings an argument or foundation could be made that any attempt to enforce this Ordinance is discriminatory and based to target a protected class.

On Friday July 21<sup>st</sup>, I received an inquiry that was from our Council President asking whether or not I had ever given a tour to a Hasidic group. Our agency gives countless tours to any individual or group who makes a request and until Friday, never have I ever been asked what the race or religion was of a tour group. When I asked what the reasoning was for the question or what impact my answer had I never received a reply. I did respond to the inquiry as I am required to do, and advised that we had in fact given a tour to both a Hasidic family and a group of Hasidic children. I cannot make any conclusions on what was the basis for the inquiry, but I find it somewhat concerning as I have never been asked the religious foundation of a tour group before.

The Ordinance restricting the use of our parks and playgrounds to New Jersey residents only will become law on July 27<sup>th</sup>, 2017 and our governing body will expect our Officers to enforce the law. I understand and respect my legal obligation to enforce laws that are passed by the legislative branches of our government. The motives behind this Ordinance are for

others to determine, but as the Chief Executive of our agency I have concerns on the wording and how it can be enforced by our Officer without clearly violating non-residents equal protection and free speech rights.

Our agency trains and instructs our Officers on a routine and regular basis on what constitutes bias based profiling and that we explicitly prohibit and will not condone or tolerate illegal profiling by any of our members. This Ordinance that we will be asked to enforce in four days seems to fly in the face of what we instruct our Officers as there is no discernible means of ascertaining the residency of a park user.

I appreciate any comments you may have on this matter.

Sincerely,

James N. Batelli  
Chief of Police

Enc.: Copy of Ordinance # 1806  
Correspondence sent to Township Administrator dated July 20, 2017  
Email sent to Mayor and Business Administrator dated July 19<sup>th</sup>, 2017