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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

BERGEN ROCKLAND ERUV ASSOCIATION,  
YISROEL FRIEDMAN, S. MOSHE  
PINKASOVITS, SARAH BERGER, MOSES  
BERGER, CHAIM BREUER, YOSEF ROSEN, and  
TZVI SCHONFELD

Plaintiffs,

-against-

THE BOROUGH OF UPPER SADDLE RIVER  
Defendant.

Civ. No. 2:17-cv-05512-JMV-CLW

AMENDED COMPLAINT

Pursuant to Fed. R. Civ. P. 15(a)(1), Plaintiff Bergen Rockland Eruv Association (“BREA”), and Plaintiffs Yisroel Friedman, S. Moshe Pinkasovits, Sarah Berger, Moses Berger, Chaim Breuer, Yosef Rosen, and Tzvi Schonfeld (collectively, “Plaintiffs”) by their attorneys, Weil, Gotshal & Manges LLP, submit this Amended Complaint, and allege herein, as follows:

**INTRODUCTION**

1. This action arises from the actions of The Borough of Upper Saddle River (“USR”), which constitute intentional deprivation of Plaintiffs’ rights and liberties under the First and Fourteenth Amendments to the United States Constitution and multiple federal statutes.<sup>1</sup>

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<sup>1</sup> Plaintiff Bergen Rockland Eruv Association’s address is P.O. Box 488, Monsey, New York 10952. Plaintiff Yisroel Friedman’s address is 2 Eros Drive, Airmont, NY 10952. Plaintiff

2. BREA, Yisroel Friedman, S. Moshe Pinkasovits, Sarah Berger, Moses Berger, Chaim Breuer, Yosef Rosen, and Tzvi Schonfeld and other Jewish residents of Rockland County, New York have sought to establish an eruv in parts of Bergen County, New Jersey that would allow Rockland County Jews with certain sincerely held religious beliefs, and who reside on or near the New York-New Jersey state lines, to carry or push objects from place to place within a designated unbroken area during the Sabbath and on Yom Kippur (the “Eruv”).

3. Many Jews have the sincerely held religious belief that, without an eruv, they are not permitted to push or carry objects outside their homes on the Sabbath and Yom Kippur. As a result, men or women who are confined to wheelchairs or who have small children or relatives confined to wheelchairs cannot attend Sabbath and Yom Kippur services or engage in any other activity outside of their homes unless, in limited circumstances, they choose to hire non-Jewish individuals to push their strollers and wheelchairs. Likewise, those who hold such beliefs are not permitted to carry items such as food, water bottles, house keys, personal identification, books, prayer shawls, or reading glasses on those days outside of their homes.

4. Accordingly, there are hundreds of eruvim (the plural form of eruv) throughout the United States, and scores in the New York-New Jersey area alone—including in Bergen, Essex, Mercer, Middlesex, Monmouth, Morris, Ocean, and Union Counties in New Jersey; in Nassau, Suffolk, Westchester, Rockland, and Albany Counties in New York; and in each of the five boroughs of New York City.

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Moshe S. Pinkasovits’ address is 4 Amanda Court, Airmont, NY 10952. Plaintiff Sarah Berger’s address is 9 Jacqueline Road, Monsey, NY, 10952. Plaintiff Moses Berger’s address is 9 Jacqueline Road, Monsey, NY, 10952. Plaintiff Chaim Breuer’s address is 9 Hillside Avenue, Airmont, NY, 10952. Plaintiff Yosef Rosen’s address is 26 Jean Lane, Monsey, NY, 10952. Plaintiff Tzvi Schonfeld’s address is 7 Hillside Avenue, Airmont, NY, 10952. Defendant Borough of Upper Saddle River’s address is 376 W. Saddle River Road, Upper Saddle River, NJ 07458.

5. In 2015, representatives of the Vaad haEruv – Plaintiffs’ designated agent for the planning, organization, and construction of an eruv – approached Orange & Rockland Utilities, Inc. (“O&R”) and requested permission to affix thin PVC plastic pipes known as “lechis,” which are necessary for the establishment of the Eruv, to utility poles in USR owned or used by O&R’s New Jersey utility subsidiary Rockland Electric Company (“REC,” and together with O&R, the “Utility Company”). The Eruv created by the installation of these lechis would expand an eruv already in place in Rockland County, such that it would encompass the homes of many observant Jews, including Plaintiffs Sarah and Moses Berger, Breuer, Rosen, and Schonfeld. The Utility Company granted express licenses to Vaad haEruv to affix lechis to the Utility Company’s poles in USR.

6. On or about June 1, 2015, the Vaad haEruv and the Utility Company entered into a License Agreement. Through the License Agreement, which is annexed hereto as Exhibit A, the Utility Company granted an express license that allows the Vaad haEruv to affix lechis to certain of the poles owned or used by the Utility Company in Bergen County for the purpose of creating an eruv.

7. After recently obtaining specific valid licenses from the Utility Company – which owns and/or uses the utility poles in USR – and under the supervision of the USR Police Department, the Vaad haEruv completed a partial eruv expansion in USR two months ago.

8. As a result of the Eruv’s completed expansion to include parts of USR and the neighboring Township of Mahwah, for the past two months, hundreds of families living along the New York/New Jersey border have been able to more fully practice their religion. More specifically, these observant Jewish residents have been able to carry items such as prayer shawls and prayer books to their synagogue and have been able to bring food, games, gifts, and books to

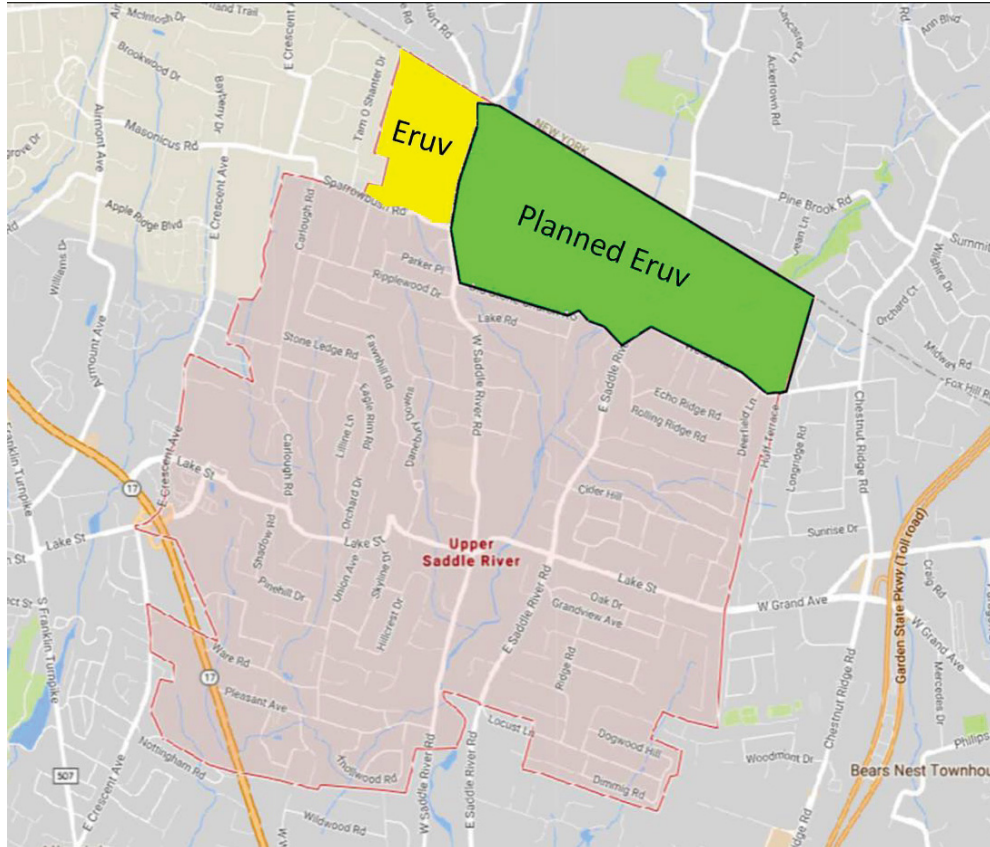
the homes of fellow community members. Because Plaintiffs Yisroel Friedman and Moshe Pinkasovits, and other members of BREA and people that BREA represents can carry these items, as well as push strollers and wheelchairs within the confines of the newly expanded Eruv, they are able to more fully practice their religion on the Sabbath.

9. Plaintiffs and other members of the Jewish community have also sought to further expand the Eruv to cover other portions of USR and the neighboring Borough of Montvale, with the goal of including additional community members within the confines of the Eruv. Six to eight more lechis are still required in USR to complete this expansion. This Amended Complaint is to protect the existing Eruv but also to complete the expansion of the Eruv.

10. In each of Mahwah and Montvale, the municipalities were aware of and initially voiced no opposition to the Jewish community's efforts to create the Eruv, and worked collaboratively with Rabbi Chaim Steinmetz, who in turn complied with all requested measures, including but not limited to obtaining specific valid licenses from the Utility Company and working under the supervision of the local police departments. Regrettably, both Mahwah and Montvale now oppose the Eruv, which encompasses only a *de minimis* portion of their towns, having succumbed to a campaign of fear, xenophobia, and anti-Semitism.

11. Without further expansion of the Eruv into a small additional section of USR, a significant number of residents living along the New York/New Jersey border – including Plaintiffs Sarah and Moses Berger, Breuer, Rosen, and Schonfeld – will continue to fall outside of the Eruv, even though they all stand benefit from the Eruv. As depicted below, the Eruv and the planned Eruv cover only a small portion of USR:





12. USR, however, has now unlawfully threatened Plaintiffs’ constitutional, civil, and contractual rights by demanding the removal of the Eruv and refusing to allow Plaintiffs to further expand the Eruv. In official written communications to the Utility Company, USR has taken the untenable positions that local laws purportedly “require the removal” of the lechis from the Utility Company’s utility poles, and that municipal approval is required for the affixation of any lechis.

13. By infringing on Plaintiffs’ rights in this manner, Plaintiffs and other members of the observant Jewish community are sustaining ongoing, irreparable injuries. As further described below, Plaintiffs and other members of the observant Jewish community face practical difficulties and hardships each and every week that passes without an eruv, as the elderly,

disabled, and families of young children are confined to their homes and thus separated from family members and the rest of the community.

14. Through its actions – which are unsupported by any local, state, or federal law– USR has also unlawfully interfered with private contracts with the Utility Company that were entered into for the purpose of establishing the Eruv.

15. Plaintiffs bring this action to obtain, *inter alia*, (a) a declaration that (i) there is no local, state, or federal law that either prohibits the affixation of the lechis to certain poles in USR or that requires municipal approval for such attachments, and (ii) that the private third parties should therefore be free and clear to implement the contracts to permit such action.

#### **JURISDICTION AND VENUE**

16. Subject matter jurisdiction over this action is conferred upon this Court pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343 and 28 U.S.C. § 1367.

17. Personal jurisdiction over this action is conferred upon this Court because Defendant is located in this District, because the acts complained of occurred in this District, and pursuant to NJ Rev Stat § 2A:4-30.68.

18. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), because Defendant is located in this District and because the events giving rise to the claim occurred in this District.

#### **THE PARTIES**

19. Plaintiff BREA is an association organized as a charitable corporation under New York State's Not-for-Profit Corporation Law. Its principal office is located in Rockland County, New York. Plaintiff BREA's members would suffer immediate and irreparable harm if the Eruv is removed.

20. Plaintiff Yisroel Friedman (“Friedman”) is an individual residing in Airmont, New York.

21. Plaintiff S. Moshe Pinkasovits (“Pinkasovits”) is an individual residing in Airmont, New York.

22. Plaintiff Sarah Berger (together with Moses Berger, the “Berger Plaintiffs”) is an individual residing in Monsey, New York.

23. Plaintiff Moses Berger (together with Sarah Berger, the “Berger Plaintiffs”) is an individual residing in Monsey, New York.

24. Plaintiff Chaim Breuer (“Breuer”) is an individual residing in Airmont, New York.

25. Plaintiff Yosef Rosen (“Rosen”) is an individual residing in Monsey, New York.

26. Plaintiff Tzvi Schnofeld (“Schonfeld”) is an individual residing in Airmont, New York.

27. Defendant USR is a Borough in Bergen County, New Jersey.

### **FACTUAL ALLEGATIONS**

#### **I. THE NEED FOR AN ERUV IS AN IMPORTANT RELIGIOUS BELIEF AND PROMOTES PRACTICE OF THE JEWISH FAITH.**

28. An eruv, under Jewish law, is a largely invisible unbroken demarcation of an area. Eruvin have existed under Jewish law for more than two thousand years. An eruv is created by, among other things, using existing telephone or utility poles and wires, existing boundaries, and strips of wood or plastic attached to the sides of certain of the poles, known as “lechis.”

29. The lechis used in the Eruv are half-inch thick PVC plastic pipes, and are affixed vertically to the poles. These pipes are unobtrusive and typically unnoticeable to a casual observer. Indeed, lechis have been described by the Second Circuit Court of Appeals as “nearly

invisible.”

30. Many Jews hold the sincere religious belief that, without an eruv, they are not permitted to push or carry objects outside their homes on the Sabbath and Yom Kippur. Eruvin allow Jews with such sincerely held religious beliefs to carry or push objects from place to place within the area on the Sabbath and Yom Kippur. Thus, within the boundaries of an eruv, these people may push baby carriages, strollers, and wheelchairs and may carry books, food, water, house keys, identification, prayer shawls, reading glasses or other items, to synagogue and other locations outside of their own homes. The ability to carry these and other items creates a safer environment and permits observant Jews to mingle more freely with their neighbors, thereby facilitating the friendship, camaraderie, and community that is so central to the Jewish and American traditions.

31. Plaintiffs live in an area of New York State that directly borders USR. If USR proceeds with its threatened takedown of the lechis that are part of the Eruv, Plaintiff Friedman and Plaintiff Pinkasovits would immediately lose access to the Eruv, and accordingly would be unable to push or carry any objects, such as those described above, outside their homes on the Sabbath and Yom Kippur. If even one week passes without an eruv, Plaintiffs and other community members would be deprived of the ability to fully and freely practice their religion on the Sabbath, constituting an irreparable injury.

32. Plaintiff Friedman has two young children – one infant and one toddler – neither of whom are able to walk to the family’s synagogue on the Sabbath. As a result of now being able to push a stroller, Friedman and others similarly situated are now able to attend synagogue and spend time on the Sabbath with other community members outside of their homes. Without

the Eruv, some family members would be forced to stay home for the entirety of the Sabbath to care for their young children.

33. Other members of Plaintiffs' community would be harmed by USR's unlawful takedown of the lechis due to their inability, in the absence of an eruv, to push wheelchairs on the Sabbath and Yom Kippur. One community member, for example, has an elderly, close relative who is dependent on a wheelchair. Within the confines of the Eruv, a wheelchair may be pushed to synagogue. If USR were to remove the lechis that facilitate the Eruv, a wheelchair-dependent individual would be confined to his or her home for the duration of the Sabbath or Yom Kippur.

34. Likewise, if USR continues to obstruct the expansion of the Eruv, Plaintiffs Berger, and Plaintiffs Breuer, Rosen and Schonfeld will be unable to push or carry any objects, such as those described above, outside their home on the Sabbath and Yom Kippur. As each week passes without an eruv, these Plaintiffs and other community members are being deprived of the ability to fully and freely practice their religion on the Sabbath, constituting an irreparable injury.

35. Plaintiffs Sarah and Moses Berger live in an area of New York that directly borders USR, and their house is located approximately several hundred feet from the New York/New Jersey border. USR's obstruction of the planned Eruv has harmed the Berger Plaintiffs because they cannot push or carry any objects, such as those described above, outside the home on the Sabbath and Yom Kippur. For example, the Berger Plaintiffs cannot push their eight-month-old baby in a stroller to the Synagogue or anywhere else outside the home on the Sabbath and Yom Kippur. Nor can the Berger Plaintiffs' family travel all together on the Sabbath to the houses of other community members for meals or to socialize, which negatively

impacts their sense of community and camaraderie. Indeed, they cannot even borrow a simple item from a neighbor absent an eruv.

36. Plaintiff Breuer lives in an area of New York that directly borders USR. Plaintiff Breuer has been harmed by USR's unlawful obstruction of the planned Eruv due to his inability, in the absence of an eruv, to push or carry any objects, such as those described above, outside the home on the Sabbath and Yom Kippur. Plaintiff Breuer and his wife cannot push their six-month-old baby in a stroller to the Synagogue on the Sabbath. Further, Plaintiff Breuer's brother-in-law, who uses a wheelchair, cannot travel to or visit Plaintiff Breuer and his family on the Sabbath because there is no eruv surrounding Plaintiff Breuer's house. As a result of USR's actions, Plaintiff Breuer and his wife (who have three young children) are harmed because they cannot push strollers and/or wheelchairs outside their house on the Sabbath. Without the Eruv, Plaintiff Breuer's family cannot attend Synagogue together, and cannot travel together to the houses of family and other community members.

37. Plaintiff Rosen lives in an area of New York that directly borders USR, such that the backyard of his property extends into USR. USR's obstruction of the planned Eruv has harmed Plaintiff Rosen because he cannot push or carry any objects, such as those described above, outside the home on the Sabbath and Yom Kippur. Plaintiff Rosen has a three-year old son who cannot make the walk to Synagogue on the Sabbath without the use of a stroller. Moreover, Plaintiff Rosen's wife has a grandmother who has visited them on the Sabbath for years. Without an eruv, however, she is unable to go outside their home on the Sabbath because she requires a wheelchair or a walker. Nor can Plaintiff Rosen's family easily travel together to the houses of family and other community members, which negatively impacts their sense of community and camaraderie. And, Plaintiff Rosen has a brother-in-law who lives nearby, but in

an area of New York that is within an eruv. Due to the absence of an eruv, Plaintiff Rosen's brother-in-law avoids walking to Plaintiff Rosen's house on the Sabbath, because he has to leave his child's stroller within the eruv and continue on without it. The last time he did so, the stroller was stolen.

38. Plaintiff Schonfeld lives in an area of New York that directly borders USR. USR's obstruction of the planned Eruv has harmed Plaintiff Schonfeld because he cannot carry various items (such as raingear) outside the home on the Sabbath and Yom Kippur. USR's actions have also directly impacted Plaintiff Schonfeld's sense of community and camaraderie, as families in his neighborhood, and particularly those with young children who cannot yet walk by themselves, are less likely to socialize outside the home on the Sabbath in the absence of an eruv.

39. USR's obstruction of the planned Eruv has also harmed many other members of the observant Jewish community who live in areas of New York that border or that are close to USR. Like other observant Jews, these additional members of the community cannot push or carry any objects, such as those described above, outside the home on the Sabbath and Yom Kippur. One such member of the community cannot push his infant in a stroller outside of his home on the Sabbath and Yom Kippur. As a result, he and his family cannot attend Synagogue together, and cannot travel together to the houses of family and other community members. He and his family also cannot easily entertain or socialize on the Sabbath in their own backyard, which negatively impacts their sense of community and camaraderie. Further, this member of the community is affiliated with a non-profit organization that provides health and human services for children and other individuals with special needs. Although he has plans to host



children who receive such care at his home for the Sabbath, without an eruv, he is unable to extend an invitation to children who are wheelchair-bound.

40. As each week passes without an eruv, the Berger Plaintiffs and Plaintiffs Breuer, Rosen, and Schonfeld, along with their families and the families of many other similarly situated community members, are being deprived of the ability to fully and freely practice their religion on the Sabbath, constituting an irreparable injury.

41. Recent press coverage provides additional examples of individuals to whom eruvim are absolutely critical. For instance, one recent article tells the story of Tenafly resident “Barry Honig, who is visually impaired and needs his seeing-eye dog and cane to get to synagogue,” and therefore depends on an eruv to carry these objects and attend synagogue.<sup>2</sup>

42. A multitude of eruvim have been established nationwide and worldwide. The first eruv in the United States was established in 1894 in the city of St. Louis, Missouri. Since then at least twenty-eight out of the fifty states now contain one or more municipalities with an eruv. These include, among many others: Cherry Hill, East Brunswick, Englewood, Fort Lee, Linden, Maplewood, Marlboro Township, Paramus, Passaic-Clifton, Rutherford, Teaneck, Bergenfield, New Milford, Edison, Highland Park, Parsippany, Elizabeth, West Orange, Livingston, Long Branch, Tenafly, and Ventnor, New Jersey; Westhampton Beach, Southampton, Quogue, Huntington, Stony Brook, Patchogue, East Northport, Merrick, Mineola, North Bellmore, Plainview, Great Neck, Valley Stream, West Hempstead, Long Beach, Atlantic Beach, Lido Beach, Roslyn, Searingtown, Forest Hills, Kew Gardens, Belle Harbor, Holliswood, Jamaica Estates, New Rochelle, Scarsdale, White Plains, Albany, Manhattan, and Poughkeepsie, New

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<sup>2</sup>See Tom Nobile, *Attorney: Mahwah PD Supervised Eruv Installation*, THE BERGEN RECORD, July 29, 2017, *available at*

<http://www.northjersey.com/story/news/bergen/mahwah/2017/07/28/attorney-mahwah-pd-supervised-eruv-installation/521157001/>.



York; Bridgeport, Hartford, Norwalk, Stamford, New Haven, and Waterbury, Connecticut; Boston, Cambridge, Springfield, and Worcester, Massachusetts; Providence, Rhode Island; Berkeley, La Jolla, Long Beach, Los Angeles, Palo Alto, San Diego, and San Francisco, California; Pittsburgh, Philadelphia, and Lower Merion, Pennsylvania; Chicago, Buffalo Grove, Glenview-Northbrook, and Skokie, Illinois; Ann Arbor, Southfield, Oak Park, and West Bloomfield Township, Michigan; Baltimore, Potomac, and Silver Spring, Maryland; Charleston, South Carolina; Birmingham, Alabama; Atlanta, Georgia; Las Vegas, Nevada; Miami, Ft. Lauderdale, Boca Raton, Boyton Beach, Deerfield Beach, Delray Beach, and Jacksonville, Florida; Denver, Colorado; Cleveland, Cincinnati, and Columbus, Ohio; Portland, Oregon; Memphis and Nashville, Tennessee; New Orleans, Louisiana; Dallas, Houston, and San Antonio, Texas; Richmond, Virginia; Seattle, Washington; Phoenix, Arizona; and Washington, D.C. Most recently, eruvim have been established in Plano and Austin, Texas; Scottsdale, Arizona; and Omaha, Nebraska.

43. On the occasion of the inauguration of the first eruv in Washington, D.C., President George H.W. Bush wrote a letter to the Jewish community of Washington in which he stated: “there is a long tradition linking the establishment of eruvim with the secular authorities in the great political centers where Jewish communities have lived. . . . Now, you have built this eruv in Washington, and the territory it covers includes the Capitol, the White House, the Supreme Court, and many other federal buildings. By permitting Jewish families to spend more time together on the Sabbath, it will enable them to enjoy the Sabbath more and promote traditional family values, and it will lead to a fuller and better life for the entire Jewish community in Washington. I look upon this work as a favorable endeavor. G-d bless you.” *See* Letter of President George H.W. Bush, annexed hereto *as* Exhibit B.

44. On April 4, 2006, the Mayor and City Council of Sandy Springs, Georgia, issued a proclamation in which the Mayor and City Council members declared: “Whereas . . . it is our desire to recognize and support the Congregation’s efforts to maintain an eruv within the vicinity of their synagogue; Now, therefore, be it proclaimed, that the desire of the Congregation . . . to create an eruv within the vicinity of their synagogue upon the public roads, sidewalks, and rights-of-way of Sandy Springs is hereby recognized within the limits allowed by the law.”

45. On September 6, 2007, the President and Board of Commissioners of Cook County, Illinois, passed a resolution creating the Glenview-Northbrook community eruv, which provided in part that an eruv “does not contravene any federal, state, or local law and will not violate any existing property rights.”

46. On February 15, 2008, Town of Oyster Bay Supervisor John Venditto presented a citation, signed by all members of the town board, to Rabbi Ellie Weissman of the Young Israel of Plainview, recognizing the expanded eruv for parts of Plainview, Old Bethpage, and Hicksville. The citation recognized “the important role that The Young Israel of Plainview contributes to the community” and wished “all the members of The Young Israel of Plainview good health and blessings in the future on the expanded ERUV.”

47. When construction to widen the lanes of the 405 Freeway in Los Angeles, California, threatened to interfere with the local eruv in late 2009, the Metropolitan Transportation Authority and the California Department of Transportation worked hand-in-hand with the local eruv administrators to ensure that the Los Angeles eruv would remain up every Sabbath. The level of accommodation was so great that Los Angeles eruv administrator Howard Witkin noted: “The level of help we’ve had, from the Roman Catholic permit people at [the California Department of Transportation] . . . to the Muslim line inspector along the freeways

who gave us engineering help. . . . The level of deference and courtesy and kindness—it makes you feel good that you live in America.” See Mitchell Landsberg, *Massive 405 Freeway Project Respects the Boundaries of a Jewish Tradition*, L.A. TIMES, July 4, 2011, available at <http://articles.latimes.com/2011/jul/04/local/la-me-405-eruv-20110704>.

48. In December 2010, Queens Borough President Helen Marshall celebrated the expansion of the eruv in central Queens, New York, to six new neighborhoods. At a ceremony held at Queens Borough Hall, Borough President Marshall said of the newly extended eruv: “It speaks to the great multi-ethnic community we have here in Queens. We have the most multi-ethnic community in the United States.” See Bob Doda, *Eruv extended to six neighborhoods*, THE QUEENS COURIER, Dec. 6, 2010, available at <http://qns.com/story/2010/12/06/eruv-extended-to-six-neighborhoods>.

49. Eruvin have also been created throughout the United States on public and private university campuses, with university administrators and local utility companies providing substantial assistance to campus Jewish communities in their effort to establish an eruv. Thus, special university campus eruvim exist in and around: Rutgers University (New Brunswick, New Jersey); Princeton University (Princeton, New Jersey); Cornell University (Ithaca, New York); the University of Pennsylvania (Philadelphia, Pennsylvania); the University of Maryland (College Park, Maryland); Johns Hopkins University (Baltimore City, Maryland); Brandeis University (Waltham/Boston, Massachusetts); Harvard University (Cambridge, Massachusetts); Yeshiva University (New York, New York); and Yale University (New Haven, Connecticut). See, e.g., Elli Fischer, *JLIC Spearheads Efforts to Enhance Campus Communities*, ORTHODOX UNION. The Cornell University Jewish community worked with the sheriff of Tompkins County, New York, to establish its eruv. See Elizabeth Krevsky, *Orthodox Jewish Community Builds*

*Ehruv on Campus*, THE CORNELL DAILY SUN, Jan. 29, 2010, available at <https://oujlic.org/the-cornell-daily-sun-orthodox-jewish-community-builds-ehruv-on-campus/>.

50. The latest college campus to welcome an eruv is the University of Illinois at Urbana-Champaign, which was established in August 2017. In heralding the Eruv – which was a collaborative effort between the University, the city of Urbana, the city of Ameren, and the city of Champaign, among others – Champaign Mayor Deborah Frank Feinen remarked: “I am so grateful that we live in a community where the creation of an eruv is possible. I applaud Ameren Illinois for easily approving the use of its power poles for the work that Hillel was doing to create the eruv. The eruv represents what is best about our inclusive community of Champaign-Urbana and is a small step toward making our citizens more comfortable and attracting new people to the area.” See OU Staff, *UIUC Hillel and Orthodox Union Establish Eruv in Champaign Area*, ORTHODOX UNION, September 7, 2017, available at <https://www.ou.org/news/uiuc-hillel-orthodox-union-establish-eruv-champaign-area/>.

51. USR’s neighboring towns have recently recognized the near-invisibility, ubiquity, and constitutionality of eruvim. In January 2015, then-mayor of Montvale, New Jersey, Roger Fyfe – a two term mayor serving for eight years and narrowly defeated by current Mayor Ghassali – issued a public statement recognizing that an eruv is constructed “so as to be unobtrusive and nearly invisible to the general public,” and that it “has been universally held that the construction of an eruv serves ‘the secular purpose of accommodation’ and does not violate the separation of Church and State.” As that statement correctly noted, “[a]bsent any compelling safety concerns, there is little role for Montvale to play in what amounts to a private negotiation between Orange and Rockland and the community that requested the eruv.” See Eruv Statement by Mayor of Montvale, annexed hereto as Exhibit C.

52. Moreover, the current Mayor of the nearby Township of Mahwah, New Jersey, also recently recognized the validity of eruv before his Township reversed course in the face of fear, xenophobia, and religious animus. On July 19, 2017 Mayor Laforet issued a public statement on the Township's website recognizing that the Board of Public Utilities (BPU) "has granted permission" for lechis to be placed on the Utility Company's poles. See "Message from the Mayor – Eruv Update" (July 19, 2017), annexed hereto as Exhibit D. Mayor Laforet explained that "because of several Federal Law suits," "[the Utility Company is] obligated to allow these ERUV markings, but they have NO OBLIGATION to notify the municipality." *Id.* (emphasis in original). Mayor Laforet further noted that "[Mahwah] cannot do anything about the installation of these plastic pipes on these utility poles establishing a[n] ERUV." *Id.* In fact, Mayor Laforet's statement links to *Tenafly Eruv Ass'n v. Borough of Tenafly*, 309 F.3d 144 (3d Cir. 2002), governing precedent establishing Plaintiffs' constitutional right to the Eruv.

## **II. PLAINTIFFS SEEK TO ESTABLISH THE ERUV, AND OBTAIN THE APPROVAL OF USR POLICE AND THE MAYOR.**

53. Plaintiffs' community representatives – including the Vaad haEruv and Rabbi Chaim Steinmetz – have obtained valid licenses from the Utility Company to attach lechis to utility poles in USR. Shortly after obtaining the licenses, Rabbi Steinmetz called the USR Police Department to notify them that he would be attaching lechis to utility poles in USR. During that phone call, the police gave their consent, so long as Rabbi Steinmetz agreed to have a "flag man" and to place a sign on the road for traffic safety purposes. Rabbi Steinmetz agreed to these requests.

54. In mid-June 2017, having obtained valid licenses, and with the consent of the USR Police Department, Plaintiffs and Rabbi Steinmetz began the work to expand an existing eruv to parts of USR by attaching lechis to utility poles.

55. A few hours after Plaintiffs and Rabbi Steinmetz began the work, USR Building Department's Director of Code Enforcement James Dougherty, along with USR Police officers, informed Plaintiffs and Rabbi Steinmetz that, by order of Mayor Minichetti, they had to stop their work. Plaintiffs and Rabbi Steinmetz complied with this directive.

56. Mayor Minichetti has provided sworn testimony that she did not issue such an order.

57. The next day, Plaintiff Pinkasovits and Rabbi Steinmetz met with Mr. Dougherty and his Building Department colleague Steven Forbes, USR's Property Maintenance Zoning Officer, to better understand why they had been ordered to stop their work and to see what had to be done so that the work could continue. Mr. Dougherty informed Plaintiff Pinkasovits and Rabbi Steinmetz that the Borough was still evaluating whether the lechis violated any local ordinances. In the middle of the meeting, Mr. Dougherty left to discuss the matter with the Mayor's office. Upon his return to the meeting, Mr. Dougherty informed Plaintiff Pinkasovits and Rabbi Steinmetz that the Mayor's office had given its consent for the work on the eruv to continue.

58. Mayor Minichetti has provided sworn testimony that she was not apprised of the meeting between Plaintiff Pinkasovits, Rabbi Steinmetz, Mr. Dougherty and his Building Department colleague Steven Forbes, nor was she consulted as to any decisions made.

59. Approximately one week after meeting with Mr. Dougherty, Plaintiff Pinkasovits and Rabbi Steinmetz met with USR Police Chief Patrick Rotella in an effort to ensure that all concerns with the Eruv expansion project were addressed. At that meeting, Plaintiff Pinkasovits and Rabbi Steinmetz explained the purpose of the Eruv and provided some additional information on the proposed Eruv.

60. Chief Rotella provided his consent as well, so long as Plaintiff Pinkasovits and Rabbi Steinmetz had a flag man and agreed to place a sign on the road to alleviate any traffic safety concerns. Plaintiff Pinkasovits and Rabbi Steinmetz agreed to these requests.

61. In addition to agreeing to have a flag man at all times when working on the Eruv in USR, Plaintiff Pinkasovits and Rabbi Steinmetz also agreed to complete a Contractor Road Construction Information form, providing further detail of when and where the work on the Eruv was to be done. In sum, Plaintiff Pinkasovits and Rabbi Steinmetz agreed to each and every request the USR Police Department made of them.

62. With the consent of the Utility Company, the Police Department, and the Mayor, Plaintiffs and Rabbi Steinmetz resumed their work. Approximately two months ago, they completed the necessary work to expand an existing eruv into parts of USR. In order to comply with the requests of the Police Department, each time Plaintiffs and Rabbi Steinmetz set out to attach lechis to utility poles in USR, they first notified the police.

63. In several instances, police officers came to check on Plaintiffs and Rabbi Steinmetz to ensure that they were complying with the Police Department's directives. Each time police officers checked on them, they gave their approval, noting that they were complying with each and every one of the Police Department's requests.

64. As a result of the Eruv, observant community members who live within this newly enclosed area have been able to more fully practice their religion on the Sabbath for the past two months.

65. If any of the lechis that have already been put up in USR are removed, the Eruv that covers this portion of USR would become invalid and Plaintiffs and other similarly situated members of the observant Jewish community will no longer be able to carry their belongings on

the Sabbath – or push a wheelchair or a stroller – as they have been able to since the Eruv was completed two months ago.

66. After the valid Eruv covering a portion of USR was completed two months ago, Plaintiffs and Rabbi Steinmetz started – but have not yet completed – a further expansion of the Eruv that will cover other portions of USR (and elsewhere) so as to include additional community members within the confines of the Eruv. These efforts, which came at significant expense, were only undertaken once Plaintiffs and Rabbi Steinmetz had secured the necessary assurances from USR that the work would be allowed to be completed.

67. Because the expansion efforts have been stalled, however, the Berger Plaintiffs and Plaintiffs Breuer, Rosen, and Schonfeld, along with many other individuals represented by BREA, do not live within the Eruv and have not been able to freely and fully practice their religion on the Sabbath.

### **III. AFTER PLAINTIFFS ENCOUNTER RANK COMMUNITY HOSTILITY TO THE ERUV, USR BACKTRACKS ON ITS PRIOR APPROVAL AND ENGAGES IN ACTS OF INTERFERENCE AND OPPOSITION**

68. Plaintiffs’ attempts to expand the Eruv have been met with hostility and rank prejudice. A vicious and discriminatory campaign against the Eruv expansion was launched by a vocal minority of residents in both USR and adjacent towns, including through various social media outlets, such as the Facebook group “Citizens for a Better Upper Saddle River” as well as the “Petition to Protect the Quality of Our Community in Mahwah.” Upon information and belief, the former contains posts and comments that are vile in their sheer antagonism towards Orthodox Jews, such that it has captured the attention of the Anti-Defamation League. Public comments posted on the latter include the following, openly anti-Semitic statements:

- “Get those scum out of here.”



- “They are clearly trying to annex land like they’ve been doing in Occupied Palestine. Look up the satanic verses of the Talmud and tell me what you see.”
- “Our town is such a great place and if these things move in they will ruin it. They think that can do whatever the hell they want and we’ll be known as a dirty town if they move in. Please keep them out...”
- “I don’t want these rude, nasty, dirty people who think they can do what they want in our nice town.”
- “I don’t want my town to be gross and infested with these nasty people.”
- “I do not want these things coming into my town and ruining it.”

69. Amid a firestorm of opposition to the Eruv in USR, on July 18, 2017, counsel for USR sent a letter to O&R stating that the lechis were purportedly in violation of Borough Ordinance No. 16-15, N.J. Stat § 48:3-18 and N.J. Stat § 48:17-10 (the “July 18 Letter”). The July 18 Letter demanded that the lechis be “immediately removed,” and threatened to pursue “all available remedies” to secure their removal. *See* Exhibit E.

70. Borough Ordinance No. 16-15 was approved in October 2015, following the Second Circuit’s decision in *Jewish People for the Betterment of Westhampton Beach v. Vill. Of Westhampton Beach*, 778 F.3d 390 (2d Cir. 2015), and at a time that expansion of the Eruv into USR was a topic of much local discussion. Indeed, the Ordinance was passed *after* several conversations took place between Borough officials and Rabbi Israel Kahan, who advocated on behalf of the Eruv expansion project and provided USR with relevant documents and licenses.

71. In addition to enacting Borough Ordinance No. 16-15 with discriminatory intent to harm Plaintiffs, USR has not enforced the ordinance with any consistency or regularity, as USR has not compelled the removal of a variety of signs and other material – including larger and more conspicuous objects than the lechis – that are posted on utility poles and other structures within USR. For example, USR has failed to enforce the local ordinance against “lost

animal” signs (such as a “lost dog” sign on a pole at Cherry Lane and West Saddle River Road); signs listing street numbers; mailboxes affixed to utility poles; and flags attached to utility poles. Photographs depicting illustrative examples of these materials, all taken in USR, are attached hereto as Exhibit F.

72. Upon receiving the July 18 Letter, the Utility Company instructed Rabbi Steinmetz by letter dated July 20, 2017 to refrain from affixing any additional lechis in USR without municipal approval (which USR has now withheld without justification). *See* Exhibit G.

73. USR’s counsel continued its acts of interference by sending an email on July 21, 2017 and a letter on July 24, 2017 (and together with the July 18 Letter, the “Threat Letters”) informing Rabbi Steinmetz and the Utility Company that if the lechis are not removed by July 26, 2017 at noon, USR would have them removed. *See* Exhibit H.

74. The Utility Company responded to the Threat Letters by email on July 21, 2017, noting that it “fail[ed] to see the need for such an accelerated timeframe, as the eruv facilities plainly present no threat to public safety,” and that “a more deliberate schedule will allow the Borough and the eruv association to resolve any and all open issues.” *See* Exhibit I.

75. On July 25, 2017, Plaintiffs’ counsel sent a response to the Threat Letters, which, *inter alia*, notified USR of Plaintiffs’ constitutional and contractual rights, and that eruvim have been universally upheld by the courts (as more fully discussed below). *See* Exhibit J.

76. As a result of USR’s unlawful acts of interference and obstruction, Plaintiffs and Rabbi Steinmetz have ceased erecting lechis in USR. If they are unable to resume their work in USR to complete the further expansion of the Eruv, with each passing week, community members will be deprived of the ability to fully and freely practice their religion on the Sabbath, constituting an immediate irreparable injury.

77. The vitriolic campaign against the Eruv next escalated into a series of hate crimes and acts of vandalism. On July 26 and 27, 2017, the Eruv in USR was vandalized at 28 locations. The police arrested a resident of USR and charged him with bashing the lechis that are “part of the eruv that dips into his hometown of USR.” *See* Elise Young, *Jewish Boundary Markers Stir Tension Even in Diverse New Jersey Town*, BLOOMBERG, available at <https://www.bloomberg.com/news/articles/2017-08-28/jewish-boundary-markers-stir-tension-even-in-diverse-n-j-town>. Vandals have similarly targeted the Eruv in Mahwah, leading State Attorney General Christopher Porrino and Mahwah Mayor Laforet to offer \$25,000 and \$1,000 rewards, respectively, for information leading to the arrest and conviction of the criminals behind the vandalism. *See id.* Those on the “Citizens for a Better Upper Saddle River” Facebook page were undeterred, however, in their hatred. One commenter, Erik S. Friis, stated as follows regarding the Mahwah Mayor and the state and local rewards: “What a major-league loser! I will personally quadruple the \$1000 reward for anyone that protects the identity of the illegally installed PVC hitter. In fact I will offer a bounty of \$100 for every confirmed PVC pipe that’s cut!”

78. On July 28, 2017, Plaintiffs’ counsel filed a Complaint against USR and USR’s Mayor Minichetti.

79. On that same day, Plaintiffs’ counsel reached an agreement with USR’s counsel that would permit Plaintiffs to immediately perform repairs on the damaged and/or vandalized lechis. Defendant continues to interfere with the erection of additional lechis to complete the Eruv.

80. USR residents continued to show unmasked animus at an August 3, 2017 town council meeting. Various USR residents spoke against the Eruv to raucous applause, making

such statements as “It’s not their community. It’s our community.” Others derided the USR police department presence “guard[ing] these guys when they put things up on our poles.” Still others attempted to justify vandalism against the Eruv because it was “returning [] property” back to the Eruv supporters, and that the “police should stand down.”

#### **IV. ERUVIN HAVE BEEN UNIVERSALLY UPHOLD BY THE COURTS.**

81. This is not the first time that the creation of an eruv has been challenged by a municipality in the face of religious animus. Every court to have considered the matter, including the Third Circuit Court of Appeals, has determined that the creation of an eruv, including through the utilization of public utility poles for the attachment of lechis, is a reasonable accommodation of religious practice under the Free Exercise Clause. *See Tenaflly Eruv Ass’n v. Borough of Tenaflly*, 309 F.3d 144, 176 (3d Cir. 2002), *cert. denied* 539 U.S. 942 (2003); *see also ACLU of N.J. v. City of Long Branch*, 670 F. Supp. 1293, 1295 (D.N.J. 1987); *Smith v. Cmty Bd. No. 14*, 128 Misc. 2d 944, 946-48 (Sup. Ct. Queens Cnty. 1985), *aff’d*, 133 A.D.2d 79 (N.Y. App. Div. 2d Dep’t 1987).

82. Following *Tenaflly*, there was a multi-year litigation against the municipalities of Westhampton Beach, Quogue, and Southampton, NY. The New York state and federal courts, including the Second Circuit Court of Appeals, repeatedly ruled in favor of the creation of an eruv, finding, among other things, that the creation of an eruv is a constitutional exercise of religious freedoms and a “[n]eutral accommodation of religious practice,” (*see Jewish People for the Betterment of Westhampton Beach v. Vill. of Westhampton Beach*, 778 F.3d 390, 395 (2d Cir. 2015)); that utility companies have the authority to enter into contracts for the attachment of lechis to poles (*see Verizon New York, Inc., et al. v. The Village of Westhampton Beach, et al.*, 11-cv-00252, 2014 WL 2711846 (E.D.N.Y. Jun. 16, 2014)); and that lechis are not signs for the purpose of town sign ordinances, and municipalities have affirmative duties to accommodate

religious uses of utility poles (*see East End Eruv Ass'n v. Town of Southampton, et al.*, No. 14-21124, 2015 WL 4160461 (Sup. Ct. Suffolk Cty., June 30, 2015)).

FIRST CLAIM FOR RELIEF

(U.S. Const.)

83. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 82 as if fully set forth herein.

84. Plaintiffs have a constitutional right under the First and Fourteenth Amendments to the United States Constitution freely to practice their religion.

85. Without an Eruv in the parts of USR that border Rockland County, New York, plaintiffs and other observant Jews cannot freely practice their religion because they cannot carry objects, or push baby carriages, strollers or wheelchairs to synagogue on the Sabbath and Yom Kippur.

86. The object, motivation, and effect of the actions of Defendant is to suppress the religious practices of the Plaintiffs and certain other Jews who reside in Airmont and other parts of Rockland County. These actions have specifically targeted Jewish citizens, as the laws that Defendant seeks to invoke to prevent the establishment of the Eruv are not enforced against citizens of other faiths with consistency or regularity.

87. The Eruv presents no aesthetic, safety, traffic, fiscal, or other concern to USR. There is, therefore, no compelling State interest in ordering the removal of the lechis in USR that form the Eruv.

88. The Defendant's actions deny Plaintiffs their rights to freely practice their religion in violation of the First and Fourteenth Amendments to the United States Constitution.

89. As a result of the actions of the Defendant, and if Defendant proceeds with the takedown of lechis that form the Eruv, and/or continues to interfere with the expansion of the Eruv, Plaintiffs will be irreparably harmed.

SECOND CLAIM FOR RELIEF

(42 U.S.C. § 1983)

90. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 89 as if more fully set forth herein.

91. The plaintiffs have a constitutionally protected right under the First and Fourteenth Amendments to the United States Constitution to freely practice their religion.

92. Defendant has acted under color of State Law to deprive plaintiffs of their rights, privileges or immunities secured by the Constitution and the laws of the United States in violation of 42 U.S.C. § 1983.

93. Defendant's actions were motivated by intent to interfere with Plaintiffs' civil rights, and Defendant was at all times aware that it was acting in violation of federal laws.

94. As a result of the actions of the Defendant, and if Defendant proceeds with the takedown of lechis that form the Eruv, or continues to interfere with the expansion of the Eruv, Plaintiffs will be irreparably harmed.

THIRD CLAIM FOR RELIEF

(42 U.S.C. § 2000cc)

95. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 94 as if fully set forth herein.

96. Defendant's actions in impeding the establishment of the Eruv constitute the imposition or implementation of a land use regulation within the meaning of RLUIPA, 42 U.S.C. § 2000cc(a)(1).

97. The utility poles at issue are undisputedly the personal property of the Utility Company, and licenses to use such property constitute a “property interest” within the meaning of RLUIPA, 42 U.S.C. § 2000cc-5(5).

98. Defendant’s actions substantially burden the religious exercise of observant Jews who wish to freely practice their religion while observing religious proscriptions against carrying objects, or pushing baby carriages, strollers or wheelchairs to synagogue on the Sabbath and Yom Kippur.

99. Defendant’s actions do not further a compelling government interest and, in any event, they are not the least restrictive means of furthering any such interest.

100. Defendant’s actions were motivated by intent to interfere with Plaintiffs’ constitutional and civil rights, and Defendant was at all times aware that it was acting in violation of federal laws.

101. Defendant has chosen to selectively enforce the laws or ordinances under which they seek to prevent the establishment of the Eruv, in a way that constitutes the imposition or implementation of a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

102. Defendant’s actions are in violation of RLUIPA.

#### FOURTH CLAIM FOR RELIEF

(Declaratory Judgment)

103. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 102 as if fully set forth herein.

104. Defendant has taken the position that certain local and/or state laws prohibit affixing lechis to the utility poles in USR and that Defendant’s approval is required for affixing lechis to such poles.

105. Plaintiffs have taken the position that there is no legal or factual basis for Defendant's positions.

106. By virtue of the foregoing, there now exists an actual, justiciable controversy between Plaintiffs and Defendant relating to their respective legal rights, duties, and obligations, which controversy is ripe for adjudication pursuant to 28 U.S.C. § 2201.

107. Declaratory relief will settle the legal issues between the parties set forth in the above-referenced letters, and finalize the controversies described in those letters.

108. Plaintiffs thus request a judgment declaring the rights and obligations of the parties, including a declaration that (a) there is no local, state, or federal law that either prohibits the affixation of the lechis to utility poles in USR, or that requires municipal approval for such attachments, including a declaration that § 16-15 of the Code of the Borough of USR is unconstitutional as a result of its discriminatory passage, approval and implementation, and (b) that the private parties should therefore be free and clear to implement contracts to construct the Eruv.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendant as follows:

A. On the First Claim for Relief, immediately, preliminarily, and permanently enjoining Defendant from removing any lechis that form the Eruv, and also enjoining Defendant from taking any action which would prevent Plaintiffs from affixing further lechis to the Utility Company's utility poles or otherwise constructing and maintaining the Eruv that already exists and the planned Eruv that is not yet complete.

B. On the Second and Third Claims for Relief, (1) permanently enjoining Defendant from continuing to engage in the discriminatory practices alleged therein; (2) and permanently enjoining Defendant from removing any lechis that form the Eruv, and also enjoining Defendant



from taking any actions which would prevent Plaintiffs from affixing lechis to the Utility Company's utility poles or otherwise constructing and maintaining the Eruv that already exists.

109. On the Fourth Claim For Relief, entering a declaratory judgment, pursuant to 28 U.S.C. § 2201, that (a) there is no local, state, or federal law that either prohibits the affixation of the lechis to certain poles in USR, or that requires municipal approval for such attachments, including a declaration that § 16-15 of the Code of the Borough of USR is unconstitutional as a result of its discriminatory passage, approval and implementation, (b) that Defendant shall be prohibited from removing any lechis that form the Eruv under cover of local, state, or federal law; (c) that Defendant shall be prohibited from taking any actions that would prevent Plaintiffs from affixing lechis to the Utility Company's utility poles or otherwise constructing an Eruv; and (d) that the private parties should therefore be free and clear to implement contracts to construct the Eruv.

C. Awarding the costs of this action, including reasonable attorney's fees pursuant to 42 U.S.C. § 1988; and

D. Awarding such other and further relief as this Court deems appropriate.

Dated: New York, New York  
September 14, 2017

/s/ Diane P. Sullivan  
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*Attorneys for Plaintiffs*

## **EXHIBIT A**

**Orange & Rockland**  
A CONEDISON, INC. COMPANY

Orange and Rockland Utilities, Inc.  
390 West Route 59  
Spring Valley NY 10977-5300  
[www.oru.com](http://www.oru.com)

RE: Installation/maintenance of an ERUV system on poles owned by Orange and Rockland Utilities

To whom it may concern,

VAAD HAERUV has executed an agreement with Orange and Rockland Utilities. The agreement allows the licensee to install and maintain attachments on poles owned by Orange and Rockland Utilities in Rockland and Bergen counties. The attachments are conduits which are solely for the purpose of the licensee's ERUV system. If you wish to verify the status of the agreement I may be contacted at 845-577-2214.

Ken Sullivan  
845-577-2214  
[Sullivanke@oru.com](mailto:Sullivanke@oru.com)  
Orange and Rockland Utilities  
Joint Use Facilities – Unit Manager

## **LICENSE AGREEMENT**

**THIS LICENSE AGREEMENT**, made as of the ~~13~~<sup>17</sup> day of June, 2015 by and between **ROCKLAND ELECTRIC COMPANY** ("Licensor"), with an address of One Blue Hill Plaza, Pearl River, New York 10965, and **VAAD HAERUV, C/O RABBI YECHIEL STEINMETZ** ("Licensee"), with an address of 51 Ashel Lane, Monsey, New York 10952-2610. Licensor and Licensee are each sometimes referred to individually as a "Party" and collectively as the "Parties."

### **WITNESSETH:**

**WHEREAS**, Licensee desires to construct an Eruv by attaching conduit Lechi ("Attachments") on certain utility poles, located in Bergen County which are owned or jointly owned and/or used by Licensor and others, ("Poles") which Poles will be designated in Exhibit A attached hereto, as such may be amended from time-to-time.

**WHEREAS**, Licensor is willing to permit, to the extent it may lawfully do so, the attachment of Licensee's Attachments, provided the Attachments do not interfere with the operations of Licensor, or any other user of the Poles;

**NOW, THEREFORE**, in consideration of the mutual covenants, terms, and conditions herein contained, the Parties do hereby covenant and agree as follows:

1. No use, however granted, of the Poles or payment of any fees or charges required under this Agreement shall create or vest in the Licensee any ownership or property right in the Poles, and nothing contained herein shall be construed in any way as indicating that Licensor has conveyed to Licensee any ownership or property right in the Poles.
2. Nothing contained herein shall be construed as affecting any rights previously conferred by Licensor by agreement to others to make attachment to the Poles, and Licensor shall continue to have all rights which it now possesses to grant such rights.
3. The Poles are and will continue to be used, operated, and maintained primarily for the

purposes of Licensor, and Licensee's use will be secondary.

4. Licensee will use the Attachments solely for the purpose of its Eruv. If Licensee attaches any unauthorized items to the Poles, Licensor may remove such items and Licensee shall reimburse Licensor for the costs of such removal.
5. Licensee shall, at its own cost and expense, maintain the Attachments in a safe condition and in good repair.
6. Licensee shall exercise special precautions to avoid damage to the facilities of Licensor and any other user of the Poles, and hereby assumes responsibility for any and all loss resulting from such damage caused by the acts, omissions or facilities of Licensee, its employees, contractors, or agents. Licensee shall make an immediate report to Licensor's Manager - Risk Management, c/o Orange and Rockland Utilities, Inc., One Blue Hill Plaza, Pearl River, NY 10965, of any such damage and shall reimburse Licensor and any other user of the Poles for all expenses incurred in repairing any such damage. The requirements of this paragraph are in addition to and not in limitation of the requirements set forth in Paragraph 12 below.
7. Licensee shall not, at any time, make any changes in the location of the Attachments the Poles without Licensor's prior written consent, except in cases of emergency in which case oral permission must first be obtained from Licensor's Service Operations Supervisor (Radio Dispatcher) at 845-352-6046, Spring Valley, NY. Such permission shall be confirmed in writing within five days of the time oral permission is given.
8. At Licensee's expense, Licensor shall perform periodic inspections of the Attachments, provided, however that Licensee shall not be responsible for the costs of more than one such inspection every five years. The fees associated with the periodic inspection shall be paid by Licensee, who will be billed at Licensor's prevailing billing rates, as the same may be adjusted from time-to-time. A copy of Licensor's current billing rates is attached hereto as Exhibit B. Licensor will provide the results of said inspections in writing within 30 days of each inspection, and Licensee may rely on the results of such inspections in connection with documenting compliance with the terms of this Agreement. Upon the discovery of an unauthorized attachment by Licensee, Licensee shall pay Licensor an amount equal to five times the annual rental fee for occupation of the pole up to the date of discovery.

9. Licensee shall pay Licensor a pole attachment fee of \$1.08 per month per Attachment for (i) sole-owned electric Poles and (ii) joint-owned Poles on which the Attachment is in Electric's custodial area. Where there are joint-owned poles and no custodial area, the pole attachment fee will be the sole-owned pole fee proportioned by the pole ownership ratio. The annual attachment fee shall be payable in advance and is due in January. The pole attachment fee shall be reviewed and re-determined annually and shall be adjusted and effective as of January 1<sup>st</sup> of the then current year.
10. Licensee shall indemnify, hold harmless and defend Licensor and its affiliates, and its and their officers, employees, directors, trustees, representatives, and agents from and against any and all claims, actions, liabilities, demands, damages, liens, losses, costs, expenses (including legal fees), judgments, and settlements of any nature whatsoever arising out of or incidental to this Agreement or work performed thereunder except to the extent due to the negligence or intentional acts of Licensor, its officers, employees, representatives or agents. In the event any suit, claim or proceeding, whether groundless or not, within the intentment of this provision is brought against Licensor, Licensee, upon notice from Licensor, shall defend the same at Licensee's own expense. This provision shall survive the termination of this Agreement.
11. Neither Licensor nor any other user of the Poles shall be liable to Licensee for any interruption of Licensee's Eruv or for any damage to Licensee's Attachments, arising in any manner. With respect to any such interruption or damage, Licensee specifically waives any claim against Licensor or any other user of the Poles, for consequential damages or loss of profits, irrespective of any fault, failure, negligence or alleged negligence on the part of Licensor or any other user of the Poles.
12. (a) Before commencing its attachment to the Poles, Licensee shall procure and maintain, at its own expense for the time period specified below, the following minimum insurance in forms and with insurance companies acceptable to the Licensor:
  - (1) Workers' Compensation Insurance for statutory obligations imposed by Workers' Compensation or Occupational Disease Laws, and Employer's Liability Insurance with a minimum limit of \$500,000.

- (2) General Liability Insurance including Personal Injury, Broad Form Property Damage, Products/Completed Operations, Contractual Liability Insurance covering all operations required to install and maintain Licensee's Attachments with minimum limits of liability of \$2,000,000 per occurrence.
- (3) Automobile Liability Insurance, including coverage for all owned, non-owned and hired automotive equipment used by Licensee so as to install or maintain Licensee's Attachments with minimum limits of liability of \$1,000,000 per occurrence.
- (b) If any of the work required to install or maintain Licensee's Attachments is subcontracted, Licensee shall require each subcontractor to carry all insurance required under this Section and to submit standard Accord Certificates of Insurance to the Licensor prior to subcontractor's commencement of its work.
- (c) For all insurance required hereunder, except Workers' Compensation and Employers Liability, the Licensor shall be named as an additional insured.
- (d) All of the insurance required hereunder shall be primary to any or all other insurance coverage and shall not contribute with similar insurance in effect for the Licensor.
- (e) All insurance required hereunder shall contain provisions wherein all rights of subrogation or recovery of any kind against the Licensor, its agents, employees, officers, successors and assigns are specifically waived by Licensee and the insuring entity.
- (f) All insurance where the Licensor is an additional insured must contain provisions which state that the policy will respond to claims or suits by the Licensor against Licensee or any other insured thereunder.
- (g) All insurance required hereunder shall provide insurance for occurrence during the effective dates of this Agreement and for a period of two years thereafter. In the event that any insurance as required herein is available only on a "claims-made" basis, such insurance



shall provide for a retroactive date not later than the effective date of this Agreement and such insurance shall be maintained by Licensee, with a retroactive date not later than the retroactive date required above, for a minimum period of five years after the termination of this Agreement.

- (h) All insurance required herein shall be issued by an insurer licensed to do business in the States of New York and New Jersey and shall have a Best's Rating of not less than "A minus" and a net surplus of not less than \$25,000,000.
- (i) Licensee's insurance carrier shall notify the Licensor of any material change in, or or cancellation of, the insurance required hereunder at least 30 days prior to the effective date of any such change or cancellation.
- (j) Prior to the attachment of any Attachments, Licensee shall provide, for the Licensor's review and approval, a Certificate of Insurance verifying the existence of insurance coverage in compliance with above requirements, from insurance companies acceptable to Licensor. Unless otherwise specified, the Certificate of Insurance should be mailed to:

Orange and Rockland Utilities, Inc.  
Joint Use Facilities Department  
390 West Route 59  
Spring Valley, NY 10977

- 13. Unless previously terminated pursuant to its terms, this Agreement shall continue in effect for a term of five years and shall remain in effect thereafter until terminated by Licensor upon 90 days notice to Licensee, or until termination by Licensee effective upon Licensee's removal of the Attachments from the Poles and Licensor's inspection and approval thereof.
- 14. If Licensee: (i) fails to perform any of the covenants, conditions, terms or provisions of this Agreement and, except where a specified time is provided for the performance of the covenant or condition, when such default is not made good within 30 days after written notice, or (ii) is adjudicated as bankrupt or makes a general assignment for the benefit of creditors or takes the benefit of any insolvency act or if a permanent receiver or trustee is appointed for Licensee's property or if a temporary receiver is appointed for its property and such

appointment is not vacated within 90 days, then, and in any of such events, Licensor may, at its option, on five days notice in writing, terminate this Agreement and the terms hereof.

15. Termination of this Agreement under the provisions of Paragraph 13 or of Paragraph 14 above, shall not relieve Licensee from any liability or obligation hereunder.
16. If this Agreement is terminated under the provisions of Paragraph 13 or Paragraph 14 above, Licensee shall remove its attachments from the Poles within 30 days of the effective date of such termination. If Licensee fails to remove its attachments within 30 days of termination, Licensor may remove the attachments and charge Licensee with the cost of such removal.
17. Licensee shall not assign, transfer, sublet, or otherwise encumber this Agreement without Licensor's express prior written consent, such consent shall not be unreasonably withheld, and any such assignment without such consent shall be void.
18. To the extent that any Make-ready work (as defined therein) is required, it will be performed in accordance with Attachment 1.
19. This Agreement constitutes the entire agreement between the Parties and supersedes any prior or contemporaneous offers, proposals, agreements or discussions between the Parties relating to the subject matter hereof. The Agreement may not be modified or amended, nor may any obligation of either Party be changed or modified, except in writing signed by the duly authorized officers or agents of the Parties.
20. Licensee hereby waives any right to trial by jury in any litigation arising out of this Agreement or out of its use of space on the Poles.
21. Except as otherwise agreed in writing by the parties, any written notification to be given to Licensee under this Agreement shall be effective only if it is in writing and (1) delivered by hand (against signed receipt); (ii) sent postage prepaid, certified or registered mail, return receipt requested, (iii) sent by nationally recognized courier service providing for overnight

delivery, provided the sender shall obtain a written receipt; or (iv) sent by facsimile after with a confirming hard copy by regular mail, addressed as follows:

Orange and Rockland Utilities, Inc.  
390 West Route 59  
Spring Valley, NY 10977  
Attention: Joint Use Facilities  
Fax: (845) 577-3074

22. Except as otherwise agreed in writing by the Parties, any written notification to be given to Licensee under this Agreement shall be effective only if it is in writing and (i) delivered by hand (against signed receipt); (ii) sent postage prepaid, certified or registered mail, return receipt requested, (iii) sent by nationally recognized courier service providing for overnight delivery, provided the sender shall obtain a written receipt; or (iv) sent by facsimile after with a confirming hard copy by regular mail, addressed as follows:

Vaad Haeruv  
Rabbi Vechiel  
Scheinert 51 Asherik.  
Mohsey N.Y. 10952  
Phone: 845-538-6471  
Fax: 845-356-2189

23. This Agreement shall be governed by and interpreted according to the laws of the State of New York without giving effect to the conflict or law principles thereof. The Parties hereto consent to the exclusive jurisdiction of the state or federal courts situated in the County of Rockland, City of New York, or regulatory agencies of competent jurisdiction for purposes of any legal action arising out of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first above written.

**ORANGE AND ROCKLAND UTILITIES, INC.**

By Francis W. Peverly  
Title VP - Operations  
Date 6/4/15

**VAAD HAERUV**

By Yechiel Szeinhmezz  
Yechiel Szeinhmezz  
Title Rabbi  
(type or print name of individual signing)  
Date May 29/15

Permit # \_\_\_\_\_

**EXHIBIT A**

**REQUEST**

Rockland Electric Company  
390 West Route 59  
Spring Valley, NY 10977  
Attention: Joint Use Facilities

In accordance with the terms of the Agreement between us, dated as of \_\_\_\_\_, 2015, request is hereby made for a Notice for the following Poles:

Also see attached drawing.

**Cable or Equipment To Be Attached**

**Pole Numbers**

See attached sheet(s)

\_\_\_\_\_  
(type or print name of applicant here)

By

\_\_\_\_\_  
(type or print name of individual signing)

Dated \_\_\_\_\_

**NOTICE**

Notice Number \_\_\_\_\_ is hereby provided for such of the above Poles as have not been stricken from the above list. Attached is our invoice which also describes what Make-ready work is necessary.

Rockland Electric Company

By

Dated \_\_\_\_\_

**CONFIRMATION**

The undersigned confirms Notice Number \_\_\_\_\_. Attached are the payment and insurance certificate, as required in our Agreement.

By

Dated \_\_\_\_\_

**ENDORSEMENT**

The Make-ready Work required for the above attachments is complete. This endorsement authorizes you to make the attachments described above. Attachment fees, as provided for in the Agreement, begin to accrue 30 days from the date of this Endorsement.

Rockland Electric Company

By

Dated \_\_\_\_\_

**VAAD HAERUV OF ROCKLAND**

**EXHIBIT B**

**Fee Schedule (Effective January 1, 2015)**

**Pre- and Post Walk Inspection (1)**

	<b><u>Straight Time Basis</u></b>	<b><u>Overtime Basis (2)</u></b>
Engineering	\$8.40 pre-walk \$6.30 post-walk \$6.30 periodic inspection	\$12.59 pre-walk \$ 9.45 post-walk

- (1) The inspection rates per pole attachment listed above are for combined utility field walks that are required to ensure satisfactory pole attachments. The inspection rates per pole attachment for post-walks are also applicable to the periodic Licensor inspections of Licensee's attachments.
- (2) Work shall not be performed on an overtime basis except with the prior approval of Licensee.
- (3) Licensor reserves the right to update the fee schedule annually.

ATTACHMENT 1

**ARTICLE I**

**MAKEREADY WORK DEFINITIONS**

**SECTION I**

- A. **Request:** The document appended to this agreement as EXHIBIT A, when it has been submitted by Licensee to Licensors.
- B. **Notice:** The Request when it has been returned by Licensors to Licensee.
- C. **Confirmation:** The Notice when it has been submitted by Licensee to Licensors.
- D. **Endorsement:** The Confirmation when it has been returned by Licensors to Licensee.
- E. **Active Endorsement:** An Endorsement which has not been canceled for any reason.
- F. **Any Other User:** Any person, who has a right, by agreement, as of the date of this Agreement, to attach facilities to poles or, who may in the future by agreement, obtain such right.
- G. **Make-ready Work:** Surveys by Licensors to determine the availability for the attachment of Licensee's equipment to Poles, the work required by Licensors to make such Poles physically available for the attachment of Licensee's equipment, including bonding and grounding Licensee's support strand and equipment to that of the Licensors, and Any Other User; the work required by Licensors to prepare and deliver the invoices contemplated under this agreement; and the work required by Licensors to inspect Licensee's attachments.

**ARTICLE II**

**GENERAL AGREEMENTS**

**SECTION 2**

- A. Licensee shall have no right to attach its equipment to any Poles owned and/or used by Licensors until an Endorsement is issued specifically covering such Poles and further agrees not to make any such attachments until it has received such Endorsement.
- B. Licensee will use any equipment attached to Poles pursuant to Endorsement provided hereunder solely to provide telecommunication services.
- C. Licensee shall pay promptly the Charges described in Section 6(C) and any costs incurred by

Licensor or charged to Licensor in connection with or arising out of this agreement, as hereinafter provided.

- D. Nothing herein contained shall be construed to compel Licensor to extend, place or maintain any of its facilities not needed for its own service requirements.

### **SECTION 3**

The geographical area covered by this Agreement is Licensor's service territory within the County of Bergen.

## **ARTICLE III** **REQUEST, SURVEY AND NOTICE**

### **SECTION 4**

Whenever Licensee wishes Licensor to provide a Notice for any Poles covered hereby, it shall make Request to Licensor therefore, in duplicate, in the form as attached as EXHIBIT A hereto. Licensee shall specify in the Request the Pole numbers and locations for which it desires Notice and shall specify the cables or other equipment it wished to attach to each Pole.

### **SECTION 5**

Licensor, upon receipt of the Request, shall make appropriate surveys of such Poles in consultation with representatives of Any Other User, and Licensee to determine, among other things, whether such Poles are available for Licensee's attachments; and, if available, the Make-ready Work that will be required. The fees associated with the surveys will be paid by the Licensee, who will be billed at Licensor's prevailing billing rates, as the same may be adjusted from time-to-time. A copy of Licensor's billing rates is attached to the Agreement as Exhibit B.

### **SECTION 6**

- A. Licensor shall give Notice to Licensee, in the form as attached as EXHIBIT A hereto, that it:
- (i) Does not object to attachment of Licensee's equipment to the Poles described by the Request as are not crossed out by Licensor subject to the conditions in this agreement; and/or
  - (ii) Does object to attachment of Licensee's equipment to such Poles described by the Request as are crossed out by Licensor and the reason for the objection.
- B. Licensor shall assign the next consecutive number in a series designed to provide a written record of all Notices.
- C. Licensor shall, at the time that it gives Notice, provide to Licensee an invoice for the Charges associated with the Make-ready Work.
- D. Licensor shall make every reasonable effort to satisfy itself that it has determined the full



extent of the Make-ready Work. Nothing in the Agreement however, shall prevent Licensor from planning or making, at any time, whatever additional changes may be required to satisfy its service requirements, to remove hazardous conditions, or to provide for attachments of the equipment of Any Other User. Licensee agrees to reimburse Licensor for any costs of additional changes occasioned solely by the presence of Licensee attachments, except for those changes, which occur within two years after completion of the initial Make-ready Work.

- E. In the event that Licensee is required to obtain an easement or right-of-way for its Attachments to the Poles, it shall obtain such easement or right-of-way at no cost to Licensor.

#### **SECTION 7**

- A. Upon Licensee's request, Licensor shall permit Licensee to review the work prints, together with available supporting costing details, in order that Licensee may satisfy itself as to the contemplated Make-ready Work and associated costs and that the Make-ready Work will be performed in accordance with the current edition of the National Electric Safety Code, the American National Standards Institute, and Licensor's Construction Standards.

### **ARTICLE IV**

#### **CONFIRMATION, COMPLETION OF MAKEREADY WORK AND ENDORSEMENT**

#### **SECTION 8**

- A. Licensee shall, within 30 days after Licensor gives Notice, confirm the Notice, in duplicate, in the form attached as EXHIBIT A hereto.
- B. The absence of Confirmation within 30 days shall automatically result in the cancellation of the Notice. In this event, Licensee shall immediately pay to Licensor such portion of the invoice that represents that part of the Make-ready Work that has been completed.
- C. At the time that Licensee confirms the Notice it shall:
  - (i) Pay to Licensor the full amount of Make-ready charges; and
  - (ii) Provide or update as may be necessary the insurance policies described in Paragraph 12 of the Agreement.

#### **SECTION 9**

- A. Work required to be performed prior to, and because of, attachment of Licensee equipment, including but not limited to the initial survey, re-arrangement of existing equipment, guying and anchoring, pole replacements, and construction inspections, shall be referred to as "Make-ready." Similar work required after initial attachment to a pole solely because of the existence of Licensee attachments shall be referred to as "additional Make-ready."

#### **SECTION 10**

- A. Licensor will endeavor to cooperate with Any Other User in performing the Make-ready Work, but does not undertake and expressly disclaims any right or obligation to require Any Other User to perform or cooperate in the performance of such Make-ready Work.

#### **SECTION 11**

- A. Licensor, shall upon completion of the Make-ready Work, endorse, date, and return copy of the Endorsement form as provided in EXHIBIT A hereto.
- B. The Endorsement shall be Licensee's authority to make attachments to the Poles designated in the endorsed Notice.
- C. Attachment fees described in Paragraph 9 shall begin to accrue 30 days following the date of Endorsement for sole owned electric and joint owned poles in the Licensor's custodial areas.

#### **SECTION 12**

Licensee shall in accordance with the provisions of Licensor's then current tariff, make application apart from this Agreement to Licensor for the purchase of electric energy for any appliance that may now or in the future require the use of electric energy.

### **ARTICLE V**

#### **ATTACHMENTS AND MAINTENANCE OF ATTACHMENTS**

##### **SECTION 13**

- A. Licensee, at its own cost and expense, shall construct, maintain, and replace all of its attachments on the Poles in accordance with the requirements and specifications of the National Electrical Safety Code, latest edition, and any amendments or revisions of said specifications or code, and in compliance with any rules or orders now in effect or that hereafter may be issued by the New York Public Service Commission, or other authority having jurisdiction over the Poles.

##### **SECTION 14**

Licensee shall, at its own cost and expense, maintain all of its attachments on the Poles in safe condition and in good repair. All tree trimming required on account of Licensee's attachments shall be done by it at its sole expense and in a manner satisfactory to Licensor and Any Other User.

## **EXHIBIT B**

A 41

THE WHITE HOUSE

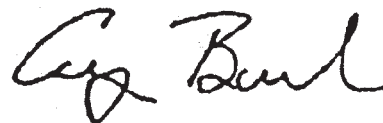
WASHINGTON

Eruv Sabbath, 1990

I am pleased to send greetings to Congregation Keshar Israel and to the Orthodox Jewish community in Washington as you celebrate the inauguration of the first eruv in the District of Columbia.

The construction of this eruv is particularly significant not only because it marks the growth of the Orthodox Jewish community in Washington but also because this city is our Nation's Capital. Indeed, there is a long tradition linking the establishment of eruvin with the secular authorities in the great political centers where Jewish communities have lived. In the words of a responsa of Rabbi Moses Sofer: "Bless the Lord, God of Israel, who has inclined the hearts of kings, rulers, and officers -- under whose sovereign jurisdiction we, the Jewish people find protection -- to grant permission to us to keep our faith in general, and specifically to establish eruvin in their thoroughfares, even on streets where the most important members of the government themselves live . . . in this city, there are places where we need to install a number of objects in order to create an eruv and we have not hidden our work, rather, it is publicized and open to all without doubt and permission has been granted."

Now, you have built this eruv in Washington, and the territory it covers includes the Capitol, the White House, the Supreme Court, and many other Federal buildings. By permitting Jewish families to spend more time together on the Sabbath, it will enable them to enjoy the Sabbath more and promote traditional family values, and it will lead to a fuller and better life for the entire Jewish community in Washington. I look upon this work as a favorable endeavor. God bless you.



## **EXHIBIT C**

### **Message From the Mayor**

Several residents have recently brought to my attention the placement of what is known as an *eruv* on utility poles owned and operated by Orange and Rockland in the area of Lark Lane bordering on Chestnut Ridge, New York. In response to these inquiries, I contacted Orange and Rockland and consulted with our municipal attorney. I wanted to briefly address this issue to provide some background information concerning the *eruv* and the way that our courts have handled prior disputes on this issue.

For those who are unfamiliar with the term, an *eruv* is a ritual enclosure that allows members of certain Jewish communities to carry objects and move more freely in their neighborhood on the Sabbath. An *eruv* typically consists of a network of thin wires and posts that are attached to the top of utility poles. Ordinarily, an *eruv* is constructed in a way so as to be unobtrusive and nearly invisible to the general public. For example, they are located all throughout Manhattan, and I personally have never noticed one in all my time in the City.

Courts in both New York and New Jersey have addressed lawsuits filed to either block or permit the construction of an *eruv*. Most recently, in a decision issued on January 6, 2015, the United States Court of Appeals for the Second Circuit dismissed a lawsuit seeking to prohibit an *eruv* in the Long Island community of Westhampton. The Second Circuit relied upon a 2002 Federal decision concerning Tenafly, New Jersey, which affirmed the right to place an *eruv* on utility poles in the municipality with the permission of the utility. In these and other cases, it has been universally held that the construction of an *eruv* serves the “secular purpose of accommodation” and does not violate the separation of Church and State. Absent any

compelling safety concerns, there is little role for Montvale to play in what amounts to a private negotiation between Orange and Rockland and the community that requested the *eruv*.

I understand that members of the public may have additional questions, and I would be happy to discuss this matter further. If you would like to speak to me about this issue, or about any other issue concerning the Borough, please feel free to contact me at [mayorfyfe@montvaleboro.org](mailto:mayorfyfe@montvaleboro.org) or to attend one of our council meetings which are held on the second and last Tuesday of every month.

## **EXHIBIT D**





Currently:  
July 25, 2017  
12:32 PM

## News & Announcements

Print this page Email this page

Page Navigation

Select News to View

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### GENERAL

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Photo Journal

### OFFICIALS

Mayor's Online Office

Township Council

Boards, Commissions  
& Committees

Government  
Representatives

### GOVERNMENT

Bids, RFP's, RFQ's,  
Notice of Intent

Community  
Emergency Response  
Team (CERT)

Contacts Directory

Departments

E-Mail Subscriptions

Emergency Services

Forms Center

Frequently Asked  
Questions

Meeting Agendas &  
Minutes

Municipal Code

Senior Center

## Message from the Mayor - ERUV UPDATE

Release Date: July 19, 2017

If you follow Social Media, concerns from residents have spread from Upper Saddle River to Mahwah regarding the ERUV. An ERUV is a closed perimeter area of about 26 square miles. Please click on the following link for more information: <http://www.myjewishlearning.com/article/eruv>

Click on the following link for a list provided by O&R of every utility pole where the plastic pipes have been secured. (**Click here: [Listing of Poles](#)**) Advice by our attorney is that we cannot do anything about the installation of these plastic pipes on these utility poles establishing a ERUV. There are links below that may better help you understand some of the issues.

The Board of Public Utilities (BPU) <http://www.bpu.state.nj.us> is the State of New Jersey public utility authority who has granted permission to this group to place the ½ plastic pipes for the purpose of a ERUV on Orange and Rockland (O&R) utility poles. <https://www.oru.com/en/contact-us>

Normally, O&R does not allow anyone to place anything on their utility poles without permission but because of several Federal Law suits, both BPU and O&R are obligated to allow these ERUV markings, But they have NO OBLIGATION to notify the municipality. The most recent litigation was in Tenafly NJ. <http://www2.ca3.uscourts.gov/opinarch/013301.txt>

These markings connect Saddle River Road and East Mahwah road, by way of Airmount Road, Airmont Ave, Masonicus Road and Sparrowbush Road and a left hand turn onto Saddle River Road.

The ERUV is not complete until the perimeter is complete. The municipalities, both Mahwah and Upper Saddle River, did not receive any notice, nor could O&R deny the application.

I realize a lot of information is circulating around town and some of it may be concerning to residents. I hope we have provided you with information that provides an understanding of the situation at hand. I, along with the Council, continue to explore options regarding this issue. We will pass on any new information as we receive.

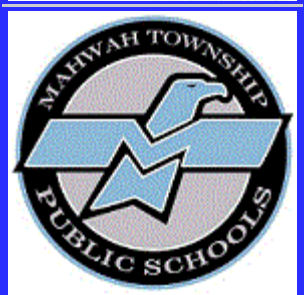
Regards,

### Current News & Information

Title	(Posted)
<a href="#">NJ Clean Energy Programs Information</a>	(7-21-17)
<a href="#">Message from the Mayor - ERUV UPDATE</a>	(7-19-17)
<a href="#">TWP. AUCTIONS RETIRED POLICE VEHICLES VIA GOVDEALS</a>	(7-15-17)
<a href="#">A Message From the Senior Center</a>	(7-14-17)
<a href="#">Change in Recycling Center Saturday Hours</a>	(7-13-17)
<a href="#">JULY 13 PADDLE DAY CANCELLED</a>	(7-13-17)
<a href="#">July Upcoming Events - Senior Center</a>	(7-13-17)
<a href="#">Delay of 2017-2018 Tax Bills</a>	(7-12-17)
<a href="#">Senior Trip - August 25, 2017</a>	(7-12-17)
<a href="#">2017 Mahwah Day Participant Forms Are Available</a>	(7-10-17)
<a href="#">New Umbrellas and Chairs At the Mahwah Municipal Pool!</a>	(6-30-17)
<a href="#">Wyckoff Avenue Detour - Sanitary Sewer Work</a>	(6-28-17)
<a href="#">Township Summer Road Closures</a>	(6-27-17)
<a href="#">July 2017 Calendar</a>	(6-26-17)
<a href="#">June 26 Planning Board Meeting Cancelled</a>	(6-23-17)
<a href="#">Recycling Barrel Glve Away - July 15</a>	(6-23-17)
<a href="#">A Message From the Mahwah Municipal Pool</a>	(6-21-17)
<a href="#">Movie Day At the Senior Activity Center</a>	(6-21-17)
<a href="#">Senior Center - Medicare Fraud Prevention</a>	(6-21-17)
<a href="#">Sr. Center - Bergen County Clerk's Office to Provide Services</a>	(6-21-17)
<a href="#">Sr. Center - Visit From The</a>	(6-21-17)

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See website for case updates



Mayor Bill Laforet

# Vista

<a href="#">Crescent Avenue Closed on or about June 26.</a>	(6-13-17)
<a href="#">Change in Council Meeting Schedule</a>	(6-9-17)
<a href="#">Township of Mahwah 2016 Audit Report</a>	(6-1-17)
<a href="#">2017 Water Department Consumer Confidence Report</a>	(5-31-17)
<a href="#">June 2017 Senior Center Calendar</a>	(5-24-17)
<a href="#">Water Report - Lead and Copper Samples</a>	(5-8-17)
<a href="#">Notice of Council Meeting Time Change</a>	(4-25-17)
<a href="#">2017 Municipal Budget</a>	(4-24-17)
<a href="#">Joint Statement of Mayor and Council President</a>	(4-24-17)
<a href="#">Adult Tennis Clinic Registration</a>	(4-21-17)
<a href="#">2017 Budget Analysis</a>	(4-20-17)
<a href="#">Co-Ed Township Softball Tournament</a>	(4-18-17)
<a href="#">2017 Mahwah Pool Forms Available</a>	(4-12-17)
<a href="#">Changes in Recycling Center Hours</a>	(4-11-17)
<a href="#">Curbside Appliance Pick Up</a>	(3-31-17)
<a href="#">Spring Clean Up Information - Grass Bags</a>	(3-30-17)
<a href="#">2017 Budget Documents (Introduced)</a>	(3-27-17)
<a href="#">NJ Transit Metro North Fare Changes</a>	(3-9-17)
<a href="#">MMA Announces Substance Abuse Community Liaison</a>	(3-6-17)
<a href="#">Correct Disposal of "Sharps"</a>	(3-1-17)
<a href="#">Jazz Dance - Message from the Senior Center</a>	(2-22-17)
<a href="#">Rockland Electric Co. - Vegetation Management</a>	(2-16-17)
<a href="#">2016 Annual Debt Statement</a>	(2-14-17)
<a href="#">2016 Unaudited Annual Financial Statement</a>	(2-14-17)
<a href="#">New Dance Class</a>	(1-5-17)
<a href="#">AARP Tax Program</a>	(1-4-17)
<a href="#">Senior Fraud Awareness</a>	(12-13-16)
<a href="#">2017 BCUA Collection Dates</a>	(12-9-16)
<a href="#">Menorah Lighting</a>	(11-22-16)
<a href="#">Environmental Commission Meeting - October 26, 2016</a>	(10-21-16)
<a href="#">How To Prevent Electrical Fires</a>	(10-14-16)

Brought to you by [www.didtheyvote.com](http://www.didtheyvote.com)

See website for case updates

## **EXHIBIT E**

**ROBERT T. REGAN**

A Professional Corporation  
ATTORNEY AT LAW  
STURBRIDGE COMMONS  
345 KINDERKAMACK ROAD  
P.O. BOX 214  
WESTWOOD, NEW JERSEY 07675

MEMBER NEW JERSEY &  
NEW YORK BARS

TEL: (201) 664-3344  
FAX: (201) 664-3836  
rtregan@rtreganlaw.com

July 18, 2017

**VIA EMAIL AND REGULAR MAIL**

Thomas Brizzolara, Director of Public Affairs  
Orange and Rockland Utilities, Inc.  
1 Blue Hill Plaza  
Pearl River, New York 10965

**RE: Eruv On Orange & Rockland Facilities**  
**Borough of Upper Saddle River, New Jersey**

Dear Mr. Brizzolara:

As you are aware, the undersigned is the attorney for the Borough of Upper Saddle River. In furtherance of my telephone conversation with you yesterday, I am advising you that the Borough requires the removal of the devices and strips placed on poles owned and maintained by Orange & Rockland Utilities, Inc. ("O&R") on certain streets within the Borough of Upper Saddle River, which are intended to denote the boundaries of an eruv.

Enclosed herewith is a copy of Ordinance No. 16-15 which is part of the Streets and Sidewalks Ordinance. Your attention is directed to Section 1 of the Ordinance, §122-17G, which prohibits the placement of items on public utility poles, except as may be authorized or required by law. It is the Borough's position that this Ordinance prohibits the placement of devices and materials which have been located on O&R's poles which are intended to denote an eruv.

In addition, applicable statutes would require municipal approval for the use by another party of utility poles within Borough rights-of-way. More particularly, *N.J.S.A. 48:3-19* expressly requires the consent of a municipality when a party seeks to use utility poles owned by another. Furthermore, *N.J.S.A. 48:17-10* prohibits the placement of or construction of any pole, conduit, wire or fixture on or upon any public road without approval of the governing body of the municipality except as to lines maintained by telegraph or telephone companies.

From the foregoing, it is clear that O&R has failed to adhere to local Ordinance, nor has it sought the necessary approvals as required by State statute. For these reasons, the Borough hereby directs that the devices and materials placed on the utility poles be immediately removed. Failure to comply with this directive will result in the Borough pursuing all available remedies to secure the removal of these devices and fixtures.

I would suggest that O&R be guided accordingly.

Very truly yours,

  
ROBERT T. REGAN

RTR:pnc

cc: Timothy P. Cawley, CEO of Orange and Rockland  
Utilities, Inc. *(Via email and regular mail)*  
Michelle Damiani, Orange and Rockland Utilities,  
Inc. *(Via email and regular mail)*  
Mayor and Council, Borough of Upper Saddle River  
Theodore Preusch, Borough Administrator

*Adopted 10/1/15*

## **BOROUGH OF UPPER SADDLE RIVER**

### **ORDINANCE #16-15**

#### **AN ORDINANCE TO AMEND CHAPTER 122 OF THE CODE OF THE BOROUGH OF UPPER SADDLE RIVER ENTITLED, "STREETS AND SIDEWALKS".**

**BE IT ORDAINED** by the Mayor and Council of the Borough of Upper Saddle River, in the County of Bergen, and State of New Jersey as follows:

#### **Section 1.**

Chapter 122 of the Code of the Borough of Upper Saddle River, Streets and Sidewalks, Article III, Borough Road Regulations, §122-17, Unlawful Acts, be and is hereby amended to add the following paragraph:

"G. Post or affix any sign, advertisement, notice, poster, paper, device, or other matter to any public utility pole, shade tree, lamp post, curbstone, sidewalk, or upon any public structure or building, except as may be authorized or required by law."

#### **Section 2. Fines and Penalties.**

For violation of any provision of this Ordinance, the fines and penalties shall be in accordance with §1-15 of the Borough Code.

#### **Section 3. Severability.**

If any section, sentence or any other part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not effect, impair or invalidate the remainder of this Ordinance but shall be confined in its effect to the section, sentence or other part of this Ordinance directly involved in the

controversy which such judgment shall be rendered.

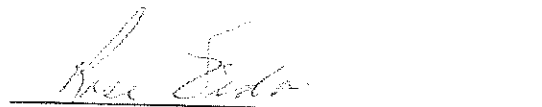
**Section 4. Inconsistent Ordinances Repealed.**

All ordinances or parts or ordinances which are inconsistent with the provisions of this ordinance are hereby repealed, but only to the extent of such inconsistencies.

**Section 5. Effective Date.**

This Ordinance shall take effect after publication thereof and final passage as required by law.

  
\_\_\_\_\_  
**JOANNE L. MINICHETTI, Mayor**

  
\_\_\_\_\_  
**ROSE VIDO, RMC Borough Clerk**

Introduced: 9/3/15  
Adopted: 10/1/15  
Approved: 10/1/15



---

**From:** Robert T. Regan [mailto:[rtregan@rtreganlaw.com](mailto:rtregan@rtreganlaw.com)]  
**Sent:** Friday, July 21, 2017 3:01 PM  
**To:** Carley, John L. - Regulatory; [eruvmonsey@gmail.com](mailto:eruvmonsey@gmail.com)  
**Cc:** Brizzolara, Tom  
**Subject:** Borough of Upper Saddle River/ Eruv <External Sender>

**EXTERNAL SENDER. Do not click on links if sender is unknown and never provide user**

As you are aware, the undersigned is the attorney for the Borough of Upper Saddle River. My prior letter dated July 18, 2017 detailed that the placement of the devices and strips on utility poles intended to establish an Eruv violates Section 122-17G of the Borough Code. The Borough has consistently and uniformly enforced this Ordinance by removing items placed on utility poles contrary to this Section.

This established policy permits the Borough to remove the devices relating to the Eruv immediately. However, I have been directed by the Governing Body to advise that, as a courtesy, the Borough will withhold removing the devices until 12 noon on Wednesday July 26, 2017. If these items have not been removed by that time, the Borough will act to remove these devices, materials and items. Please be guided accordingly.

Robert T. Regan, Esq.

345 Kinderkamack Road



P.O. Box 214

Westwood, New Jersey 07675

Phone: [\(201\) 664-3344](tel:(201)664-3344)

Fax: [\(201\) 664-3836](tel:(201)664-3836)

Email: [rtregan@rtreganlaw.com](mailto:rtregan@rtreganlaw.com)

**ROBERT T. REGAN**

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MEMBER NEW JERSEY &  
NEW YORK BARS

TEL: (201) 664-3344  
FAX: (201) 664-3836  
rtregan@rtreganlaw.com

July 24, 2017

**VIA EMAIL AND REGULAR MAIL**

John L. Carley, Esq.  
Associate General Counsel  
Rockland Electric Company  
4 Irving Place  
New York, New York 10003-0987  
**carleyj@coned.com**

Vaad Haeruv  
c/o Rabbi Yechiel Steinmetz  
51 Ashel Lane  
Monsey, New York 10952-2610  
**eruvmonsey@gmail.com**

**RE: Upper Saddle River Eruv**

Gentlemen:

In furtherance of my email of Friday July 21, 2017, this is to confirm that the Borough of Upper Saddle River requires **removal of the eruv by 12:00 noon on Wednesday, July 26, 2017.**

The Borough would recommend that the company or firm that did the installation also do the removal. In any event, failure to have the eruv removed by that time will result in the Borough acting to have the eruv removed.

Please be guided accordingly.

Very truly yours,

  
ROBERT T. REGAN

RTR:pnc

cc: Mayor and Council, Borough of Upper Saddle River  
Theodore Preusch, Borough Administrator

## **EXHIBIT F**



**Erik S. Friis**

8小时 · New Jersey · Upper Saddle River

More "quality" work by our friends at the corner of Cherry and WSRR.



赞

评论

分享



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**Upper Saddle River**



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**59 Rolling Ridge**

**Upper Saddle River**



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See website for case updates









**LOST DOG**



Please **DO NOT** Chase

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DEVASTATED FAMILY... Please help us

Call if you have ANY information







## **EXHIBIT G**



Rockland Electric Company

Rockland Electric Company  
4 Irving Place  
New York NY 10003-0987  
www.oru.com

July 20, 2017

**VIA EMAIL &  
REGULAR MAIL**

Vaad Haeruv, c/o Rabbi Yechiel Steinmetz  
51 Ashel Lane  
Monsey, New York 10952-2610

Re: eruv on Rockland Electric Company Utility Poles  
Borough of Upper Saddle River, New Jersey

Dear Rabbi Steinmetz:

I enclose a letter we recently received from an attorney representing the Borough of Upper Saddle River, New Jersey ("Borough") regarding the eruv related facilities in the Borough that are attached to the utility poles of Rockland Electric Company. Please confer with the appropriate Borough officials and obtain any necessary municipal approvals for the eruv related facilities currently attached to Rockland Electric Company's utility poles. In addition, in light of the attached letter, you should refrain from attaching any additional eruv related facilities to Rockland Electric Company's utility poles until you have received all necessary municipal consents for such attachments.

Please contact me if you wish to discuss this matter further.

Sincerely,

John L. Carley  
Associate General Counsel  
(212) 460-2097  
carleyj@coned.com

## **EXHIBIT H**

---

**From:** Robert T. Regan [mailto:[rtregan@rtreganlaw.com](mailto:rtregan@rtreganlaw.com)]  
**Sent:** Friday, July 21, 2017 3:01 PM  
**To:** Carley, John L. - Regulatory; [eruvmonsey@gmail.com](mailto:eruvmonsey@gmail.com)  
**Cc:** Brizzolara, Tom  
**Subject:** Borough of Upper Saddle River/ Eruv <External Sender>

**EXTERNAL SENDER. Do not click on links if sender is unknown and never provide user**

As you are aware, the undersigned is the attorney for the Borough of Upper Saddle River. My prior letter dated July 18, 2017 detailed that the placement of the devices and strips on utility poles intended to establish an Eruv violates Section 122-17G of the Borough Code. The Borough has consistently and uniformly enforced this Ordinance by removing items placed on utility poles contrary to this Section.

This established policy permits the Borough to remove the devices relating to the Eruv immediately. However, I have been directed by the Governing Body to advise that, as a courtesy, the Borough will withhold removing the devices until 12 noon on Wednesday July 26, 2017. If these items have not been removed by that time, the Borough will act to remove these devices, materials and items. Please be guided accordingly.

Robert T. Regan, Esq.

345 Kinderkamack Road

P.O. Box 214

Westwood, New Jersey 07675

Phone: [\(201\) 664-3344](tel:(201)664-3344)

Fax: [\(201\) 664-3836](tel:(201)664-3836)

Email: [rtregan@rtreganlaw.com](mailto:rtregan@rtreganlaw.com)

**ROBERT T. REGAN**

A Professional Corporation  
ATTORNEY AT LAW  
STURBRIDGE COMMONS  
345 KINDERKAMACK ROAD  
P.O. BOX 214  
WESTWOOD, NEW JERSEY 07675

MEMBER NEW JERSEY &  
NEW YORK BARS

TEL: (201) 664-3344  
FAX: (201) 664-3836  
rtregan@rtreganlaw.com

July 24, 2017

**VIA EMAIL AND REGULAR MAIL**

John L. Carley, Esq.  
Associate General Counsel  
Rockland Electric Company  
4 Irving Place  
New York, New York 10003-0987  
**carleyj@coned.com**

Vaad Haeruv  
c/o Rabbi Yechiel Steinmetz  
51 Ashel Lane  
Monsey, New York 10952-2610  
**eruvmonsey@gmail.com**

**RE: Upper Saddle River Eruv**

Gentlemen:

In furtherance of my email of Friday July 21, 2017, this is to confirm that the Borough of Upper Saddle River requires **removal of the eruv by 12:00 noon on Wednesday, July 26, 2017.**

The Borough would recommend that the company or firm that did the installation also do the removal. In any event, failure to have the eruv removed by that time will result in the Borough acting to have the eruv removed.

Please be guided accordingly.

Very truly yours,

  
ROBERT T. REGAN

RTR:pnc

cc: Mayor and Council, Borough of Upper Saddle River  
Theodore Preusch, Borough Administrator

# **EXHIBIT I**



---

----- Forwarded message -----

From: **Carley, John L. - Regulatory** <[CarleyJ@coned.com](mailto:CarleyJ@coned.com)>

Date: Fri, Jul 21, 2017 at 5:07 PM

Subject: RE: Borough of Upper Saddle River/ Eruv <External Sender>

To: "Robert T. Regan" <[rtregan@rtreganlaw.com](mailto:rtregan@rtreganlaw.com)>, "[eruvmonsey@gmail.com](mailto:eruvmonsey@gmail.com)" <[eruvmonsey@gmail.com](mailto:eruvmonsey@gmail.com)>

Cc: "Brizzolara, Tom" <[BRIZZOLARAT@oru.com](mailto:BRIZZOLARAT@oru.com)>, "Carley, John L. - Regulatory" <[CarleyJ@coned.com](mailto:CarleyJ@coned.com)>

Thank you for your email below. Rockland Electric Company ("RECO") fails to see the need for such an accelerated timeframe, as the eruv facilities plainly present no threat to public safety. A more deliberate schedule will allow the Borough and the eruv association to resolve any and all open issues. In RECO's view, any removal of the eruv facilities should be performed by the eruv association. In addition, for safety reasons, RECO does not condone the removal of items from its poles. The Borough should be aware of the hazards associated with work on energized facilities and exercise all appropriate safeguards. RECO also would caution the Borough that, while highly improbable, if its removal activities result in any damages to RECO's poles and/or facilities, the Borough may be liable for such damages.

John L. Carley

Associate General Counsel

Consolidated Edison Company of New York, Inc.

4 Irving Place, Room 1815-S, New York, NY 10003

[\(212\) 460-2097](tel:(212)460-2097) FAX: [\(212\) 677-5850](tel:(212)677-5850)

Email: [carleyj@coned.com](mailto:carleyj@coned.com)

**From:** Robert T. Regan [mailto:[rtregan@rtreganlaw.com](mailto:rtregan@rtreganlaw.com)]  
**Sent:** Friday, July 21, 2017 3:01 PM  
**To:** Carley, John L. - Regulatory; [eruvmonsey@gmail.com](mailto:eruvmonsey@gmail.com)  
**Cc:** Brizzolara, Tom  
**Subject:** Borough of Upper Saddle River/ Eruv <External Sender>

**EXTERNAL SENDER. Do not click on links if sender is unknown and never provide user**

As you are aware, the undersigned is the attorney for the Borough of Upper Saddle River. My prior letter dated July 18, 2017 detailed that the placement of the devices and strips on utility poles intended to establish an Eruv violates Section 122-17G of the Borough Code. The Borough has consistently and uniformly enforced this Ordinance by removing items placed on utility poles contrary to this Section.

This established policy permits the Borough to remove the devices relating to the Eruv immediately. However, I have been directed by the Governing Body to advise that, as a courtesy, the Borough will withhold removing the devices until 12 noon on Wednesday July 26, 2017. If these items have not been removed by that time, the Borough will act to remove these devices, materials and items. Please be guided accordingly.

Robert T. Regan, Esq.

345 Kinderkamack Road

P.O. Box 214

Westwood, New Jersey 07675

Phone: [\(201\) 664-3344](tel:(201)664-3344)

Fax: [\(201\) 664-3836](tel:(201)664-3836)

Email: [rtregan@rtreganlaw.com](mailto:rtregan@rtreganlaw.com)

## **EXHIBIT J**

**Weil, Gotshal & Manges LLP**

BY E-MAIL

767 Fifth Avenue  
New York, NY 10153-0119  
+1 212 310 8000 tel  
+1 212 310 8007 fax

**Yehudah L. Buchweitz**

July 25, 2017

Robert T. Regan, Esq.  
345 Kinderkamack Road  
PO Box 214  
Westwood, NJ 07675  
rtregan@rtreganlaw.com

Re: *Upper Saddle River Eruv*

Dear Mr. Regan:

We represent a not-for-profit company being incorporated for the purpose of coordinating efforts to expand an eruv in parts of the Borough of Upper Saddle River, and the surrounding area. I write in response to your July 18, 2017 letter to Orange and Rockland Utilities, Inc. (“O&R”) and your follow-on correspondence of July 21 and 24, 2017 to John L. Carley of Rockland Electric Company (“REC”) and Rabbi Chaim Steinmetz, in which you threaten to impede my clients’ constitutional and contractual rights by as early as tomorrow at 12 noon.

For your reference, an eruv is a virtually invisible unbroken demarcation of an area which may be established by the attachment of wooden or plastic strips, called “lechis,” to telephone or utility poles. Jewish law prohibits the carrying or pushing of objects from a private domain, such as a home, to the public domain on the Sabbath and Yom Kippur. Based on the sincerely-held religious belief of certain observant Jews, without an eruv, they are unable to leave their homes on these days to attend services at synagogue or be with family and friends if they are, for example, pushing a baby stroller or wheelchair, or carrying things such as prayer books, keys, or medications. Thus, absent an eruv, certain observant Jews are deprived of the opportunity to participate in mandatory communal prayers and observances. Accordingly, a multitude of eruvim (the plural of “eruv”) have been established statewide and nationwide.<sup>1</sup>

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<sup>1</sup> The first eruv in the United States was established in 1894 in the city of St. Louis, Missouri. Since then at least twenty-eight out of the fifty states now contain one or more municipalities with an eruv. These include, among many others: Cherry Hill, East Brunswick, Englewood, Fort Lee, Maplewood, Paramus, Passaic-Clifton, Rutherford, Teaneck, Edison, West Orange, Long Branch, Tenafly, and Ventnor, New Jersey; Westhampton Beach, Southampton, Quogue, Huntington, Stony Brook, Patchogue, East Northport, Merrick, Mineola, North Bellmore, Plainview, Great Neck, Valley Stream, West Hempstead, Long Beach, Atlantic Beach, Lido Beach, Roslyn, Searingtown, Forest Hills, Kew Gardens, Belle Harbor, Holliswood, Jamaica Estates, New Rochelle, Scarsdale, White Plains, Albany, and Manhattan, New York; Bridgeport,

Robert T. Regan  
 July 25, 2017  
 Page 2

**Weil, Gotshal & Manges LLP**

Although notably absent from your recent correspondence, we presume you know that any legal question regarding eruv has been conclusively settled, as *every* court to have considered the matter, including the Third Circuit Court of Appeals, has determined that the creation of an eruv, including through the utilization of public utility poles for the attachment of lechis, is a reasonable accommodation of religious practice under the Free Exercise Clause. *See Tenaflly Eruv Ass'n v. Borough of Tenaflly*, 309 F.3d 144, 176 (3d Cir. 2002), *cert denied* 539 U.S. 942 (2003).<sup>2</sup> Following its successful *pro bono* representation of eruv proponents in Tenaflly, this law firm recently represented an eruv association in multi-year litigation against the municipalities of Westhampton Beach, Quogue, and Southampton, NY. There, New York state and federal courts, including the Second Circuit Court of Appeals, repeatedly ruled in favor of the eruv association, finding, among other things, that municipal non-interference with the creation of an eruv is a constitutional exercise of religious freedoms and “[n]eutral accommodation of religious practice,” (*see Jewish People for the Betterment of Westhampton Beach v. Vill. of Westhampton Beach*, 778 F.3d 390, 395 (2d Cir. 2015)); that utility companies have the authority to enter into contracts for the attachment of lechis to poles (*see Verizon New York, Inc., et al. v. The Village of Westhampton Beach, et al.*, 11-cv-00252, 2014 WL 2711846 (E.D.N.Y. Jun. 16, 2014)); and that lechis are not signs for the purpose of town sign ordinances, and municipalities have affirmative duties to accommodate religious uses of utility poles (*see East End Eruv Ass'n v. Town of Southampton, et al.*, No. 14-21124, 2015 WL 4160461 (Sup. Ct. Suffolk Cty., June 30, 2015)). An eruv has now been up in these municipalities for almost two years, without further dispute or controversy.

In fact, in the days following the Second Circuit’s unanimous decision in January 2015 in a case that I argued, the then-Mayor of Montvale, New Jersey issued a public statement recognizing that an eruv is constructed “so as to be unobtrusive and nearly invisible to the general public,” and that it “has been

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Hartford, Norwalk, Stamford, New Haven, and Waterbury, Connecticut; Boston, Cambridge, Springfield, and Worcester, Massachusetts; Providence, Rhode Island; Berkeley, La Jolla, Long Beach, Los Angeles, Palo Alto, San Diego, and San Francisco, California; Pittsburgh, Philadelphia, and Lower Merion, Pennsylvania; Chicago, Buffalo Grove, Glenview-Northbrook, and Skokie, Illinois; Ann Arbor, Southfield, Oak Park, and West Bloomfield Township, Michigan; Baltimore, Potomac, and Silver Spring, Maryland; Charleston, South Carolina; Birmingham, Alabama; Atlanta, Georgia; Las Vegas, Nevada; Miami, Ft. Lauderdale, Boca Raton, Boyton Beach, Deerfield Beach, Delray Beach, and Jacksonville, Florida; Denver, Colorado; Cleveland, Cincinnati, and Columbus, Ohio; Portland, Oregon; Memphis and Nashville, Tennessee; New Orleans, Louisiana; Dallas, Houston, and San Antonio, Texas; Richmond, Virginia; Seattle, Washington; Phoenix, Arizona; and Washington, D.C. Most recently, eruvim have been established in Plano and Austin, Texas; Scottsdale, Arizona; and Omaha, Nebraska. On the occasion of the inauguration of the first eruv in Washington, D.C., President George H.W. Bush wrote a letter to the Jewish community of Washington in which he stated: “there is a long tradition linking the establishment of eruvim with the secular authorities in the great political centers where Jewish communities have lived. . . . Now, you have built this eruv in Washington, and the territory it covers includes the Capitol, the White House, the Supreme Court, and many other federal buildings. By permitting Jewish families to spend more time together on the Sabbath, it will enable them to enjoy the Sabbath more and promote traditional family values, and it will lead to a fuller and better life for the entire Jewish community in Washington. I look upon this work as a favorable endeavor. G-d bless you.” *See* 1990 Letter from George Bush to Congregation Keshet Israel, attached hereto as Exhibit A.

<sup>2</sup> *See also ACLU of N.J. v. City of Long Branch*, 670 F. Supp. 1293, 1295 (D.N.J. 1987).

Robert T. Regan  
 July 25, 2017  
 Page 3

**Weil, Gotshal & Manges LLP**

universally held that the construction of an eruv serves ‘the secular purpose of accommodation’ and does not violate the separation of Church and State.” As that statement correctly noted, “[a]bsent any compelling safety concerns, there is little role for Montvale to play in what amounts to a private negotiation between Orange and Rockland and the community that requested the eruv.” *See* Eruv Statement by Mayor of Montvale, attached hereto as Exhibit B.

Over the past months, therefore, my clients have sought to expand an existing eruv to parts of Upper Saddle River, Mahwah, and Montvale by attaching lechis to utility poles pursuant to valid licenses negotiated between community members using the eruv and O&R. We understand that Rabbi Steinmetz worked collaboratively with Upper Saddle River Police in this regard, and complied with all paperwork and safety measures that were requested of him. Moreover, the Borough of Upper Saddle River *expressly approved* of the eruv expansion in a recent meeting attended by, among others, Upper Saddle River’s Director of Code Enforcement, James Dougherty. It is our understanding that Mr. Dougherty left the meeting to discuss the issue with Mayor Minichetti’s office, and returned with approval to proceed so long as a certified flagman and police were present during the work. Again, my clients complied with these directives.

In light of the settled legal principles outlined above, as well as the Borough’s prior approval of the lechis, we were both surprised and dismayed by your recent correspondence, which purports to rely on inapplicable and/or unconstitutional state and local laws as restricting my clients’ exercise of their civil liberties. They do not. We have reviewed Borough Ordinance No. 16-15 attached to your letter, and find it deeply flawed as applied to lechis.

*First*, the Ordinance was approved in October 2015, following the Second Circuit’s decision in *Westhampton Beach* and at a time that expansion of the eruv to the Borough was a topic of much local discussion. Indeed, it is our understanding that the Ordinance was passed *after* several conversations took place between Borough officials and Rabbi Israel Kahan, who advocated on behalf of the eruv expansion project and provided the Borough with relevant documents and licenses. If, as it appears, the Borough then passed the Ordinance with the intent to discriminate against a particular religious group, or even with religious affiliation in mind, it will be struck down as unconstitutional. This is true even “absent allegations of overt hostility and prejudice.” *See Hassan v. City of New York*, 804 F.3d 277, 301, 309 (3d Cir. 2015); *Hunter v. Underwood*, 471 U.S. 222 (1985) (holding that a facially neutral state constitutional provision was discriminatorily enacted); *see also Shrum v. City of Coweta*, 449 F.3d 1132, 1144–45 (10th Cir. 2006) (McConnell, J.) (“Proof of hostility or discriminatory motivation may be sufficient to prove that a challenged governmental action is not neutral, but the Free Exercise Clause is not confined to actions based on animus.”).<sup>3</sup>

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<sup>3</sup> It does not appear to us coincidental that Allendale, located just three miles from Upper Saddle River, adopted an *identical* ordinance just six months later. *See* Borough of Allendale, § 233-31 (Adopted April 28, 2016).

Robert T. Regan  
 July 25, 2017  
 Page 4

**Weil, Gotshal & Manges LLP**

*Second*, we are already aware that the Borough has selectively enforced the Ordinance, contrary to the representations of your letter. *See* Exhibit C (picture of “Lost Dog” sign on a pole at Cherry Lane and West Saddle River Road in the Borough). Such selective enforcement runs headlong into *Tenafly*, which held that the borough’s selective, discretionary application of a similar local ordinance violated the neutrality principle of the Free Exercise Clause, because it “devalue[d] . . . Jewish reasons for posting items on utility poles by judging them to be of lesser import than nonreligious reasons and thus single[d] out the plaintiffs’ religiously motivated conduct for discriminatory treatment.” 309 F.3d at 168 (citing, *inter alia*, *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 537 (1993)).

*Third*, even assuming that the *lechis* – which are merely 1/2-inch strips of PVC plastic – fall within the scope of the Ordinance (and we make no such concession), the Ordinance expressly contemplates exceptions “as may be authorized or required by law.” In the context of an eruv specifically, it is now settled law that “while religious institutions are not exempt from local zoning laws, greater flexibility is required in evaluating an application for a religious use and every effort to accommodate the religious use must be made.” *See Southampton*, 2015 WL 4160461 at \*6 (finding that the Southampton Zoning Board’s application of local ordinance to *lechis* was “improper and constituted an abuse of the [Zoning Board’s] discretion as it ignored its affirmative duty to suggest measures to accommodate the [eruv association’s] variance applications.”).<sup>4</sup>

What has become distressingly clear is that the Borough’s recent about-face and take-down demand does not stem from any feigned concern over inapplicable and unenforced local ordinances, but from rank religious animus. As you are likely aware, a vicious and discriminatory campaign against the eruv expansion has been launched by residents in both Upper Saddle River and adjacent towns, including the Facebook Group “Citizens for a Better Upper Saddle River,” and the “Petition to Protect the Quality of Our Community in Mahwah.” Councilman Ditkoff correctly noted that the former “contains posts and comments that are anti-Semitic,” capturing the attention of the Anti-Defamation League. Illustrative examples of the public comments to the latter unfortunately speak for themselves:

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<sup>4</sup> Neither N.J. Stat § 48:3-18 nor N.J. Stat § 48:17-10 appears to have ever been enforced against an entity affixing material to a utility pole pursuant to a valid contract with a utility company. Indeed, under the plain text of N.J. Stat. § 48:3-19 (which was passed in 1962 as part of a series of laws meant to encourage the joint use of poles by the still-growing population of electric, telephone, and telegraph companies), nothing prevents a “person,” such as a utility company that “has a lawful right to maintain poles,” from licensing the use of the pole to another “person” by contract without municipal consent. N.J. Stat § 48:17-10 dates back to the late 1800s, during the advent of the first telecommunications revolution, and concerns the use of a “local line,” which is obviously different than the *lechis* at issue. This statute was passed at a time when each utility company had its own pole lines, and it was not uncommon to find electric companies with individual utility poles (or “local lines”) located next to multiple telephone and telegraph companies who also had their own utility poles. *See* James H. Laskey, *Lost in the Cloud Municipal Regulation of the Internet’s Backbone*, N.J. Law., October 2012, at 43; John Brooks, *Telephone – The First Hundred Years* 86-87 (Harper & Row 1975). Neither statute, then, has any applicability to, let alone bars, my clients’ valid agreements with O&R. We note that in *Westhampton*, the Eastern District of New York federal court interpreted the similar New York Transportation Corporations Law as providing no limitation on a “corporation’s ability to enter into private contracts for the use of its poles.” *Westhampton Beach*, 2014 WL 2711846, at \*15.



Robert T. Regan  
July 25, 2017  
Page 5

**Weil, Gotshal & Manges LLP**

- “Get those scum out of here.”
- “They are clearly trying to annex land like they’ve been doing in Occupied Palestine. Look up the satanic verses of the Talmud and tell me what you see.”
- “Our town is such a great place and if these things move in they will ruin it. They think that can do whatever the hell they want and we’ll be known as a dirty town if they move in. Please keep them out...”
- “I don’t want these rude, nasty, dirty people who think they can do what they want in our nice town.”
- “I don’t want my town to be gross and infested with these nasty people.”
- “I do not want these things coming into my town and ruining it.”

These ignorant and wildly anti-Semitic public comments are, of course, extremely troubling, and have no place in civilized society. But they also confirm that any action taken by the Borough will be in response to a religious practice – specifically, a religious practice of observant Jews. Here, too, the *Tenaflly* decision is instructive, if not dispositive, as the Third Circuit held that where a borough takes action directed against a religious group in a manner that is neither neutral nor generally applicable, it must withstand strict scrutiny review. *Tenaflly*, 309 F.3d at 165 (citing *Lukumi*, 508 U.S. at 532, 542); *see also Lukumi*, 508 U.S. at 540-42 (citing public statements surrounding passage of local ordinances as evidence they were “enacted because of, not merely in spite of . . . religious practice”).

Finally, your letter ignores that observant Jews will suffer practical difficulties and hardships each and every week that passes without an eruv, as the elderly, disabled, and families of young children are confined to their homes and thus separated from family members and the rest of the community during the Sabbath. We remind you that municipal intransigence in accommodating sincerely-held religious beliefs by obstructing the creation of an eruv can constitute constitutional injury, and has given rise in other cases to claims for violation of, among other things, individuals’ First Amendment Free Exercise Clause rights, the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.*, as well as 42 U.S.C. § 1983. Section 1983 recognizes a private cause of action against any person who, acting under color of state law, deprives another of “any rights, privileges or immunities secured by the Constitution and laws” of the United States. *Monell v. N.Y.C. Dep’t of Social Servs.*, 436 U.S. 658 (1978). Such a claim is proper against a municipality when its policies deprive an individual of his or her federal rights, *id.* at 690, and the prevailing party in such an action is entitled to reasonable attorneys’ fees. *See* 42 U.S.C. § 1988; *see also Tenaflly Eruv Ass’n v. Borough of Tenaflly*, 195 Fed.Appx. 93 (3d Cir. 2006) (granting eruv association’s motions for attorneys’ fees in the aggregate amount of over \$400,000, based on law firm rates from the year 2002, which was followed by a



Robert T. Regan  
July 25, 2017  
Page 6

**Weil, Gotshal & Manges LLP**

settlement by the borough). Moreover, if the Borough follows through on the threats contained in your letters, it will also constitute a tortious interference with my clients' valid licenses with O&R. At bottom, proceeding in the manner described in your letters will be a costly and assuredly unsuccessful endeavor for the Borough.

For all of these reasons, we reject your demand to remove the lechis from REC's utility poles. We agree with counsel for REC, who noted that there is no basis or need for the accelerated timeframe contained in your letters, as the lechis "plainly present no threat to public safety," and that a "more deliberate schedule will allow the Borough and the eruv association to resolve any and all open issues." To that end, although we believe any legal issues associated with eruv to have been conclusively settled by the courts, we are available to discuss any questions or concerns with either you or the Borough. We reserve all of our clients' legal rights.

Very truly yours,

*/s/ Yehudah L. Buchweitz*

Yehudah L. Buchweitz

cc: John L. Carley, Esq.  
Yitzchok Altman  
Jay Friedman  
Moshe Pinkasovitz  
Abraham Rosenwasser  
Rabbi Chaim Steinmetz  
Robert G. Sugarman, Esq.  
David Yolkut, Esq.  
Jessie B. Mishkin, Esq.