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July 27, 2017

By Hand Delivery

Chief James N. Batelli
Mahwah Police Department
221 Franklin Turnpike
Mahwah, New Jersey 07430

Re: Enforceability of Mahwah Township Ordinance No. 1806

Dear Chief Batelli:

I write in response to your July 24, 2017 letter, seeking guidance concerning the enforceability of Mahwah Township Ordinance No. 1806 (the "Ordinance"), which becomes effective on July 27, 2017, and limits the use of Mahwah recreational facilities to New Jersey residents. In your letter, you raise a number of concerns regarding the Mahwah Police Department's ("MPD") ability to enforce the Ordinance without, among other things, violating the constitutional rights of individuals using Mahwah recreational facilities as well as Attorney General Directive 2005-1 (the "Directive"), which expressly prohibits racially-influenced policing. You have also expressed concern that enforcement of the Ordinance may expose you and the MPD to increased civil liability and to internal affairs complaints. I concur with your observations concerning the Ordinance and agree that its enforcement raises serious legal issues. For the reasons set forth below, pursuant to my authority as the Chief Law Enforcement Officer of Bergen County, I direct you not to enforce the Ordinance.

First, enforcement of the Ordinance raises numerous constitutional concerns as it provides you no neutral criteria for MPD officers to utilize when deciding to detain an individual to ascertain his/her residency status. At best, the Ordinance invites MPD officers to stop individuals for no reason at all, and, at worst, MPD officers may be called on (as discussed below) to stop individuals for impermissible reasons. As a result, its enforcement would violate the Fourth Amendment's proscription against unlawful searches and seizures. Indeed, in Barkawi v. Borough of Haledon, the Appellate Division affirmed the trial court's invalidation of a similar ordinance excluding non-residents (of the borough in that case) from borough parks on Fourth Amendment grounds. No. A-7455-9725, 1999 WL 33601519 at *5 (App. Div. Jun. 21, 1999), cert. denied, 162 N.J. 487 (Nov. 18, 1999).



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Second, enforcement of the Ordinance may violate the Directive prohibiting racially-influenced policing, which provides in relevant part:

A sworn officer or civilian employee of a police agency acting under the authority of the laws of the State of New Jersey shall not consider a person's race or ethnicity as a factor in drawing an inference or conclusion that the person may be involved in criminal activity, or as a factor in exercising police discretion as to how to stop or otherwise treat the person....

Directive at ¶ 2(a). In this regard, you have informed me that since enactment of the Ordinance (but prior to its effective date), the MPD has received numerous calls asking for it to be enforced against individuals perceived by the callers to be out-of-state members of the Hasidic Jewish community using Mahwah parks. Any response by MPD officers to verify such calls would necessarily run afoul of the Directive as the responses would be based on impermissible grounds.

Third, responding to any such calls for service could also give rise to violations of criminal statutes enacted to prohibit such conduct by law enforcement officers. See N.J.S.A. 3C:30-5 (setting forth the New Jersey State Legislature's declaration relative to deprivation of civil rights by public officials) and 2C:30-6 (crime of official deprivation of civil rights if a public servant knowing that his conduct is unlawful and acting with the purpose to intimidate or discriminate against an individual or group of individuals because of race, color, religion, etc., subjects another to unlawful detention or impedes another in the lawful exercise of any right or privilege).

Fourth, while the reasons outlined above alone counsel against enforcement of the Ordinance, it also bears noting that its enforcement may give rise to claims that the Ordinance interferes with First Amendment guarantees and an individual's federal constitutional right to due process and equal protection under the law.

Finally, I want to thank you for bringing this matter to my attention and if you have any additional questions concerning the above please do not hesitate to contact me. I am also copying Mahwah Mayor William Laforet, members of the Mahwah Township Council, and the Township Attorney on this letter, so that they may consider my observations with respect to the Ordinance and the problems with its enforcement.

Very truly yours,



GURBIR S. GREWAL
Bergen County Prosecutor

cc: Mayor William Laforet
Council President Robert Hermansen
Council Vice President Jonathan Wong
Council Member Janet Ariemma
Council Member George Ervin
Council Member David May
Council Member Steven Sbarra
Council Member James Wysocki
Township Attorney Brian M. Chewcaskie, Esq. (by e-mail only)