

EXHIBIT Q

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
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Attorney for the State of New Jersey,
Department of Transportation
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - HUDSON COUNTY
DOCKET NO.: HUD-L-607-18

JACQUELINE ROSA,	:	
	:	
Plaintiff,	:	<u>Civil Action</u>
	:	
v.	:	
	:	
BOROUGH OF LEONIA, ET AL.,	:	
	:	
Defendants.	:	

STATE OF NEW JERSEY	:	
DEPARTMENT OF TRANSPORTATION,	:	
	:	
Plaintiff-Intervenor,	:	
	:	
v.	:	COMPLAINT FOR A DECLARATORY
	:	JUDGMENT AND FOR AN ACTION IN
	:	LIEU OF PREROGATIVE WRITS
BOROUGH OF LEONIA, NEW	:	
JERSEY,	:	
	:	
Defendant.	:	

The State of New Jersey Department of Transportation ("DOT") brings this action against the Borough of Leonia ("Leonia"), New Jersey, for an order declaring that Leonia's recently adopted traffic ordinances, Ordinance Nos. 2017-19, 2018-2 and 2018-5 (hereinafter collectively referred to as "the ordinances"), are legally invalid as a matter of law and permanently enjoining Leonia from enforcing the ordinances.

THE PARTIES

1. The DOT maintains its headquarters at the David J. Goldberg Transportation Complex, 1035 Parkway Avenue, Trenton, in the County of Mercer, New Jersey. Pursuant to N.J.S.A. 27:1A-1, the DOT is responsible for promoting the "efficient, fully integrated and balanced transportation system" throughout New Jersey, including the review and approval of local traffic ordinances on municipal or county roads.

2. Leonia is incorporated under the borough form of government. N.J.S.A. 40A:60-1 to -8.1. The governing body of Leonia consists of the mayor and six council members, all of whom are elected at-large. N.J.S.A. 40A:60-2. According to Leonia's website, the borough is comprised of multiple departments, including a police department.

3. Leonia is located within close proximity to the George Washington Bridge and to several state and county highways, including but not limited to, the New Jersey Turnpike, and State Routes 4, 46 and 80. In addition, a portion of State Route 93, also known as Grand Avenue, is within the municipal boundaries of Leonia.

4. Leonia is adjacent to several other municipalities within Bergen County, including Fort Lee, Englewood, Ridgefield Park, Palisades Park, and Teaneck. A portion of Bergen County Route 503, also known as Degraw Avenue and Fort Lee Road, is within Leonia.

THE DOT'S LEGAL AUTHORITY TO REGULATE TRAFFIC

5. The Legislature's purpose and intent in passing the "Transportation Act of 1966" ("Transportation Act") was:

to establish the means whereby the full resources of the State could be used and applied in a coordinated and integrated matter to solve or assist in the solution of the problems of all modes of transportation; to promote an efficient, fully integrated and balanced transportation system for the State; to prepare and implement comprehensive plans and programs for all modes of transportation development in the State; and to coordinate the transportation activities of State agencies, State-created public authorities, and other public agencies with transportation responsibilities within the State.

[N.J.S.A. 27:1A-1.]

6. The Transportation Act authorizes the Commissioner of Transportation (the "DOT Commissioner") to develop and promote efficient transportation services and coordinate the activities of the DOT with other public agencies and authorities. N.J.S.A. 27:1A-5.

7. Pursuant to N.J.S.A. 39:4-8(a), the Commissioner is not required to approve any ordinance, resolution, or regulation, unless, after investigation by the Commissioner the same shall appear to be "in the interest of safety and the expedition of traffic on the public highways."

8. The Legislature in N.J.S.A. 39:4-8(b) and (c) permits municipalities to adopt traffic ordinances without the DOT Commissioner's approval only for the traffic measures listed in N.J.S.A. 39:4-8(c), subject to the provisions of N.J.S.A. 39:4-138, and N.J.S.A. 39:4-197.

9. For example, the Legislature in N.J.S.A. 39:4-197 permits municipalities to alter speed limitations; limit the use of streets to certain classes of vehicles; designate one way streets; and regulate street parking.

10. Pursuant to N.J.S.A. 39:4-8(a), prior to the adoption of any municipal or county ordinance, resolution, or regulation, which places any impact on roadways in an adjoining

municipality or county, the governing board or body of the municipality must provide appropriate notice to the adjoining municipality or county.

11. Pursuant to N.J.S.A. 39:4-8(a), notwithstanding any other provision of N.J.S.A. 39:4-8 to the contrary, any municipal or county ordinance, resolution, or regulation which places any impact on a State highway shall require the approval of the DOT Commissioner. Impact on a State highway is defined by N.J.A.C. 16:27-2.1 to mean "any traffic control device on a non-State highway that is proposed for installation: 1. At a State highway intersection; 2. Within 500 feet of a State highway; or 3. At a distance greater than 500 feet from a State highway but has a resultant queue that extends within 500 feet or less from a State highway" and "any traffic regulation applicable to a non-State highway: 1. At a State highway intersection; 2. Within 500 feet of a State highway; or 3. At a distance greater than 500 feet from a State highway but has a resultant queue that extends within 500 feet or less from a State highway."

12. The Legislature has not established authority under Title 39, or elsewhere, for a municipality to limit access to certain streets depending on whether a person is classified

as a resident or is a person seeking to conduct business within a municipality.

13. The Legislature has not established authority in Title 39, or elsewhere, for a municipality to establish "no through" streets.

14. The Attorney General opined in 1955 that the power to designate so-called "no through" streets is not among the powers granted to a municipality by N.J.S.A. 39:4-197, nor is such power granted by any other provision of our statutes. As the Attorney General opined, "There is no inherent power vested in a municipality by which it may legally restrict the right of the public to the free use of streets and roads. Any right of the municipality to pass ordinances and resolutions regarding the flow of traffic over its streets and highways can arise only by legislative grant; and there has been none." (DOT Exhibit A)

15. This Attorney General opinion remains legally valid because, while the Legislature has amended Title 39 several times, most recently in 2008 to extend certain additional traffic regulation powers to municipalities and counties, the Legislature has never extended to municipalities the authority to adopt "no through" street ordinances, or to

limit access to municipal streets based on a residency classification or on whether a person was seeking to access a destination within the municipality.

LEONIA'S INVALID TRAFFIC ORDINANCES

16. The Mayor and Council of Leonia adopted the ordinances between December 4, 2017 and March 5, 2018.

17. The ordinances restrict traffic on certain municipal streets during certain hours, to its residents, with certain exceptions, including persons who can demonstrate a documented need to access a residence on a Leonia street and persons traveling to destinations within Leonia.

18. On or about December 4, 2017, the Mayor and Council of Leonia adopted Ordinance Number 2017-19, which amended and supplemented Chapter 194 of Leonia's Municipal Code and added two new provisions, Sections 194-25.1 and 194-49.

19. Section 194-25.1 of Leonia's Municipal Code, identified as Ordinance 2017-19, provides: "Closing of Certain Streets. No person shall operate a vehicle on those streets or parts of streets as described in Schedule XVIII (§ 194-49) attached to and made a part of this Chapter during the times of the days indicated in said Schedule unless that person is a resident of the said street needing access to his home or can

demonstrate or document a need to access a residence on the street or parts of streets as described.”

20. Section 194-49 of Leonia’s Municipal Code, identified as Ordinance 2017-19, provides a list of travel restrictions and road closures affecting approximately 70 roads and intersections during the hours of 6:00 a.m. to 10:00 a.m. and 4:00 p.m. to 9:00 p.m.

21. On or about January 17, 2018, the Mayor and Council of Leonia adopted Ordinance Number 2018-2, which amended and supplemented Chapter 194 of Leonia’s Municipal Code, and added a new provision, Section 194-25.2.

22. Section 194-25.2 of Leonia’s Municipal Code, identified as Ordinance Number 2018-2, provides for a \$200 penalty for any person convicted of violating Section 194-25.1 “or imprisonment for a term of not exceeding 15 days, or both.”

23. On or about March 5, 2018, Leonia adopted Ordinance Number 2018-5, which amends Sections 194-25.1 and 194-149 of Leonia’s Municipal Code.

24. Section 194-25.1 of Leonia’s Municipal Code, as amended in its entirety by Ordinance 2018-5, provides: “Closing of Certain Streets. No person shall operate a vehicle on those streets or parts of streets as described in Schedule XVIII (§

194-49) attached to and made part of Chapter 194 during the times of the days indicated in said Schedule unless that person (a) Is a resident of said street needing access to his home or can demonstrate a documented need to access a residence on the street or parts of streets as described; or (b) [i]s traveling to and/or from a Leonia destination."

25. Section 194-49 of Leonia's Municipal Code, as amended by Ordinance 2018-5, provides an amended list of travel restrictions and road closures affecting more than 75 roads and intersections during the hours of 6:00 a.m. to 10:00 a.m. and 4:00 p.m. to 9:00 p.m.

26. The ordinances, which "close" or restrict non-residents or those not having business in Leonia from turning onto a long list of streets, have in effect made these streets "no through streets" during the hours specified in the ordinances for individuals who do not have a residence on the street or need to access a residence on the street or parts of the streets described in the ordinances.

27. The ordinances have an impact on a State highway as defined by N.J.A.C. 16:27-2.1, and were not submitted to the DOT Commissioner for approval.

28. The ordinances have an impact on adjoining municipalities and Leonia did not provide notice to the adjoining municipalities as required by N.J.S.A. 39:4-8(a) (second unnumbered paragraph).

29. According to published news reports, the purpose of the ordinances was to induce navigational apps to remove Leonia streets from their algorithms. Lisa W. Foderaro, Navigation Apps Are Turning Quiet Neighborhoods Into Traffic Nightmares, N.Y. TIMES (Dec. 24, 2017), <http://www.nytimes.com/2017/12/24/nyregion/traffic-apps-gps-neighborhoods.html>.

30. According to published news reports and Leonia's website, Leonia has been offering residents yellow hang tags in order to identify their vehicles for purposes of accessing the Leonia roads with restricted access pursuant to the ordinances. John Surico, What Happens When a City Bans Non-Resident Drivers,? CITYLAB (Apr. 18, 2018), <http://www.citylab.com/transportation/2018/04/the-small-town-that-took-on-waze/558215>; see also Leonia Safe Streets, Borough of Leonia, <http://www.leonianj.gov/depts/leoniasafeStreets/information.htm> (last visited May 15, 2018).

31. According to published news reports, the Mayor of Leonia has indicated that drivers without yellow tags may be stopped and questioned by Leonia's police department. Dave Carlin, Leonia, New Jersey: Town wants residential streets removed from GPS apps, may fine drivers \$200, WCBS-TV/CNN (Jan. 10, 2018, 5:41 AM), <http://www.wptv.com/news/local-news/water-cooler/leonias-new-jersey-town-wants-residential-streets-removed-from-gps-apps-may-fine-drivers-200>.

32. According to one published news report, Leonia's mayor stated, "The first thing the officer is going to say is, 'Do you have business in Leonia?'" Dave Carlin, Leonia, New Jersey: Town wants residential streets removed from GPS apps, may fine drivers \$200, WCBS-TV/CNN (Jan. 10, 2018, 5:41 AM), <http://www.wptv.com/news/local-news/water-cooler/leonias-new-jersey-town-wants-residential-streets-removed-from-gps-apps-may-fine-drivers-200>.

33. According to published news reports, for purposes of enforcing the ordinances, Leonia posted "Do Not Enter" signs with the words "Residents Exempt" printed below. Svetlana Shkolnikova, 'Residents and Leonia Destinations Only' to replace 'Do Not Enter' signs barring commuters, NORTHJERSEY.COM (Feb. 22, 2018 10:23 PM),

<http://www.northjersey.com/story/news/bergen/leonia/2018/02/21/1eonia-drafts-new-traffic-signage-help-businesses/359675002>.

34. According to published news reports, Leonia later proposed posting amended signs in order to appeal to Leonia's businesses. Leonia To Get Friendlier Signs Banning GWB Shortcut Seekers, CBS NEW YORK/AP (Feb. 15, 2018), <http://newyork.cbslocal.com/2018/02/15/leonia-new-road-signs>; Svetlana Shkolnikova, Leonia amends controversial road closure ordinance to boost business, NORTHJERSEY.COM (March 5, 2018 11:31 PM), <http://www.northjersey.com/story/news/bergen/leonia/2018/03/05/1eonia-amends-controversial-road-closures-law-boost-business/390951002>.

35. According to published news reports, traffic-restricting signs remain posted on Leonia's roads and Leonia's police department continues to enforce the ordinances. Anthony Johnson, Road signs in Leonia causing rift between town, state of New Jersey, WABC-TV (May 3, 2018), <http://abc7ny.com/traffic/road-signs-causing-rift-in-new-jersey-town/3424745>.

36. On March 16, 2018, the Attorney General's Office wrote to Leonia's Counsel explaining the applicable Title 39

statutes, the 1955 Attorney General opinion, and that they render the Leonia ordinances invalid. The Attorney General's Office directed Leonia to "immediately refrain from enforcing the above referenced ordinances" and offered to facilitate a meeting between Leonia and the DOT officials to discuss other, appropriate measures to address Leonia's traffic concerns.

37. DOT traffic engineering staff and Leonia met on April 4, 2018 to discuss appropriate traffic controls in Leonia that would not violate Title 39.

38. On information and belief, Leonia continues to enforce the ordinances, through traffic control devices (signage) and municipal police enforcement efforts.

FIRST COUNT
(Declaratory Judgment)

39. The DOT repeats and reasserts all prior allegations of this complaint as if fully set forth at length herein.

40. The Declaratory Judgment Act, N.J.S.A. 2A:16-50 to -62, authorizes courts to declare rights, status and other legal relations so as to afford litigants relief from uncertainty and insecurity.

41. Given the circumstances here, there is a justiciable controversy between adverse parties and the DOT has an interest in this suit.

WHEREFORE, the DOT demands judgment against Leonia declaring that the ordinances are null and void, because they purport to create "no-through streets," even though pursuant to Title 39, and as further interpreted by the Attorney General's 1955 opinion, Leonia has no such authority, along with awarding to the DOT reasonable attorney's fees and costs.

SECOND COUNT
(Declaratory Judgment)

42. The DOT repeats and reasserts all prior allegations of this complaint as if fully set forth at length herein.

43. The Declaratory Judgment Act, N.J.S.A. 2A:16-50 to -62, authorizes courts to declare rights, status and other legal relations so as to afford litigants relief from uncertainty and insecurity.

44. Given the circumstances here, there is a justiciable controversy between adverse parties and the DOT has an interest in this suit.

WHEREFORE, the DOT demands judgment against Leonia declaring that the ordinances are null and void, because they

purport to regulate traffic based on residency classification for which Leonia has no authority, along with awarding to the DOT reasonable attorney's fees and costs.

THIRD COUNT
(Declaratory Judgment)

45. The DOT repeats and reasserts all prior allegations of this complaint as if fully set forth at length herein.

46. The Declaratory Judgment Act, N.J.S.A. 2A:16-50 to -62, authorizes courts to declare rights, status and other legal relations so as to afford litigants relief from uncertainty and insecurity.

47. Given the circumstances here, there is a justiciable controversy between adverse parties and the DOT has an interest in this suit.

WHEREFORE, the DOT demands judgment against Leonia declaring that the ordinances are null and void, because they create an impact on a State highway (State Route 93) and Leonia did not submit the ordinances to the DOT Commissioner for approval, along with awarding to the DOT reasonable attorney's fees and costs.

FOURTH COUNT
(Declaratory Judgment)

48. The DOT repeats and reasserts all prior allegations of this complaint as if fully set forth at length herein.

49. The Declaratory Judgment Act, N.J.S.A. 2A:16-50 to -62, authorizes courts to declare rights, status and other legal relations so as to afford litigants relief from uncertainty and insecurity.

50. Given the circumstances here, there is a justiciable controversy between adverse parties and the DOT has an interest in this suit.

WHEREFORE, the DOT demands judgment against Leonia declaring that the ordinances are null and void, because they create impact on roadways in one or more adjoining municipalities and Leonia did not provide notice of the ordinance to the adjoining municipalities, along with awarding to the DOT reasonable attorney's fees and costs.

FIFTH COUNT
(Action in Lieu of Prerogative Writs)

51. The DOT repeats and reasserts all prior allegations of this complaint as if fully set forth at length herein.

52. Leonia does not have legal authority within one of the enumerated exceptions under Title 39 to restrict traffic as it has done in the ordinances.

53. Because the ordinances at issue are legally invalid, Leonia should be enjoined from further enforcing the ordinances at issue, including but not limited to the use of signage, traffic stops by police officials notifying motorists about the ordinances at issue, and the issuance of traffic citations.

54. The DOT's claim for relief is based upon an established legal right.

55. This matter involves overriding public interest considerations that call out for judicial intervention by this court through the issuance of an injunction that permanently enjoins Leonia from further enforcing the ordinances, including but not limited to the use of signage regarding the ordinances, municipal police officials notifying motorists about the ordinances, and the issuance of traffic citations based on the ordinances.

WHEREFORE, the DOT demands judgment against Leonia enjoining and restraining Leonia from further enforcement of the ordinances, including but not limited to the use of signage

regarding the ordinances, police officials notifying motorists about the ordinances, and the issuance of traffic citations based on the ordinances, along with awarding to the DOT reasonable attorney's fees and costs.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: /s Philip J. Espinosa
Philip J. Espinosa
Deputy Attorney General
Attorney ID No.: 030311988

Dated: June 11, 2018

CERTIFICATION PURSUANT TO RULE 4:69-4

I, Philip J. Espinosa, Deputy Attorney General, certify pursuant to Rule 4:69-4, that upon information and belief, because the ordinances are already publicly available on the internet, there are no necessary transcripts of Leonia proceedings that must be ordered in these circumstances.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: /s Philip J. Espinosa
Philip J. Espinosa
Deputy Attorney General
Attorney ID No.: 030311988

Dated: June 11, 2018

CERTIFICATION PURSUANT TO RULE 4:5-1

I, Philip J. Espinosa, Deputy Attorney General, certify pursuant to Rule 4:5-1 that the matter in controversy is the subject of an action entitled Jacqueline Rosa v. Borough of Leonia, et al., pending in the Superior Court of New Jersey, Law Division, Hudson County, Docket No. HUD-L-000607-18. In addition, there is no other non-party who should be joined in this action or who is subject to joinder at this time because of potential liability as to any party on the basis of the same transactional facts.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: /s Philip J. Espinosa
Philip J. Espinosa
Deputy Attorney General
Attorney ID No.: 030311988

Dated: June 11, 2018

DOT EXHIBIT A

Also, in 43 *Am. Jur. Public Officers* Section 461, it is said:

"Official duties involving the exercise of discretion and judgment for the public weal cannot be delegated. They can be performed only in person."

This rule has been followed in *State v. Howard*, 74A 392 (Sup. Ct. Vt. 1909) *State, Danforth, pros. v. Paterson* 34 N. J. L. 163, (Sup. Ct. 1870) *Sodekson v. Lynch, et al.* 9 N. E. 2nd, 372 (Sup. Jud. Ct. Mass. 1937) *Broderick v. City of New York* 67 N. E. 2nd 737, (N. Y. Ct. App. 1946).

While the Courts have experienced some difficulty in giving the terms "ministerial" and "discretionary" a practical working definition, *Note*, 26 *Mich. L. Rev.* 933 (1928), they have recently been defined with approval as follows:

"A ministerial act is one which a person or board performs upon a given state of facts, in a prescribed manner, in observance of the mandate of legal authority and without regard to or the exercise of his own judgment upon the propriety of the act being done.

"Discretion may be defined, when applied to public functionaries, as the power or right conferred upon them by law of acting officially under certain circumstances, according to the dictates of their own judgment and conscience, and not controlled by the judgment or conscience of others." *Independent School Dist. of Danbury v. Christiansen*, 49 N. W. 2nd 263 (Sup. Ct. Iowa 1951).

While it is manifest that the proper exercise of any delegated ministerial function involves some degree of discretion, where the legislative intent may be reasonably said to include the judgment and discretion of the public officer, there can be no delegation of the discretion so conferred. Cf. *Schwartz v. Camden*, 77 N. J. Eq. 135 (Ch. 1910). When it is considered that the claims made under Section 2A:37-32 N. J. S. may be repaid without limitation as to amount, No. 21 *Opinions of the Attorney General of New Jersey*, 1954, it is reasonable to say that the legislative intent included the judgment and discretion of the State Treasurer.

Accordingly, there being no statutory authority to delegate, the duty imposed upon the State Treasurer by Section 2A:37-32 N. J. S. to determine the validity of claims for repayment of money in his custody cannot be delegated.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General.

By: CHARLES J. KEHOE,
Assistant Deputy
Attorney General.

CJK:MG

MARCH 4, 1955.

HON. FREDERICK J. GASSERT, JR.,
Director, Division of Motor Vehicles,
State House,
Trenton, New Jersey.

FORMAL OPINION—1955. No. 5.

DEAR DIRECTOR GASSERT:

Our opinion has been requested (1) as to the power of a municipality, (the Borough of Demarest in this case) to pass an ordinance establishing "no through" streets on which all traffic will be prohibited other than that whose destination is to some point on that street, and (2) if such power exists, is such an ordinance subject to your approval.

N. J. S. A. 39:4 197 provides that:

"No municipality shall pass an ordinance or resolution on a matter covered by or which alters or in any way nullifies the provisions of this chapter (the Motor Vehicle and Traffic Act) or any supplement to this chapter; except that ordinances and resolutions may be passed regulating special conditions existent in the municipality on the subjects and within the limitations following:

(1) Ordinance

- a. Altering speed limitations as provided in section 39:4 98 of this Title;
- b. Limiting use of streets to certain class of vehicles;
- c. Designating one-way streets;
- d. Designating stops, stations or stands for omnibuses;
- e. Regulating the stopping or starting of street cars at special places, such as railroad stations, public squares or in front of certain public buildings;
- f. Regulating the passage or stopping of traffic at certain congested street corners or other designated points;
- g. Regulating the parking of vehicles on streets and portions thereof including angle parking as provided in section 39:4-135 of this Title;
- h. Regulating the parking of vehicles upon grounds, other than a street or highway, owned or leased and maintained by the municipality, or any school district board of education therein, including any lands devoted to the public parking of vehicles, the entrances thereto and exits therefrom.

(2) Ordinance or resolution

- a. Designating through streets as provided in article 17 of this chapter (39:4 140 et seq.);
- b. Designating and providing for the maintenance as 'no passing' zones of portions of highway where overtaking and passing or driving to the left of the roadway is deemed especially hazardous."

The power to designate "no through" streets is not among the powers granted to a municipality by this section, nor is such power granted by any other provision of our statutes. The power to designate main traveled or major highways within the municipality as a "through street," to be marked at the entrance thereto from intersecting streets by "stop" signs is given by N. J. S. A. 39:4 197 and 39:4 140, but an ordinance designating such through street cannot be effective until it is approved by you, this because N. J. S. A. 39:4 202 provides:

"No resolution, ordinance or regulation passed, enacted or established under authority of this article, shall be effective until submitted to and approved by the director as provided in section 39:4-8 of this Title."

There is no inherent power vested in a municipality by which it may legally restrict the right of the public to the free use of streets and roads. Any right of the municipality to pass ordinances and resolutions regarding the flow of traffic over its streets and highways can arise only by legislative grant; and there has been none.

Even where the subject matter of the ordinance is within the power granted by the statute, the regulation must bear a reasonable relationship to public safety; there cannot be arbitrary action. (See *Garneau v. Eggers*, 113 N. J. L. 245, 248, 249 (Sup. Ct. 1934); *Giant Tiger Corporation v. Trenton*, 11 N. J. Misc. 836, (Sup. Ct. 1933); *Pivnick v. Newark*, 14 N. J. Super., 134 (Sup. Ct. 1951); and *Terminal Storage, Inc. v. Raritan Township*, 15 N. J. Super., 547 (Sup. Ct. 1951)

A recent New York case (*People v. Grant*, 306 N. Y. 258, 117 N. E. (2d) 542 (Ct. of App. N. Y. 1954)) is in accord with our conclusion.

In the cited case, an ordinance of the Town of North Hempstead prohibited "through or transient vehicular traffic" on streets in or near the area of New Hyde Park, the ordinance being passed as a result of complaints from residents who objected to the volume of traffic at particular hours of the day, mainly because of the large number of automobiles driven by persons going to and from work at the Sperry Gyroscope Company plant situated just north of the area. In holding the ordinance invalid the Court said,

"Political subdivisions and municipal corporations hold * * * streets for the benefit of the public, consisting of the whole of the people, and regulation of the streets is the exercise of a governmental function in that they are subject exclusively to regulation and control by the state, as a sovereign except to the extent that the Legislature delegates power over them to political subdivisions and municipal corporations."

It is our opinion that the "no through street" ordinance proposed by the Borough of Demarest, and similar ordinances proposed by other municipalities, have no legislative sanction.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General.

By: JAMES T. KIRK,
Deputy Attorney General.

JTK/LL

MARCH 4, 1955.

HONORABLE WILLIAM F. KELLY, JR.,
President, Civil Service Commission,
State House,
Trenton 7, New Jersey.

FORMAL OPINION 1955. No. 6.

DEAR PRESIDENT KELLY:

You have recently requested advice concerning the power of a municipal governing body to set minimum and maximum age limits for Patrolmen and Firemen. Your memorandum states that the City of Union City adopted two ordinances in 1925 the effect of which is to establish the minimum age at 21 and the maximum age at 30 for Patrolmen and Firemen. These age limits coincide with those set by R. S. 40:47-4, as amended. However, prior to its amendment, approved April 24, 1945, the statute provided for a thirty-five year maximum age.

N. J. S. A. 38:23A 2, enacted in 1944, provides as follows.

"When the qualifications for any examination or test for, or appointment or election to any office, position or employment under the government of this State, or of any county, municipality, school district or other political subdivision of this State, or under any board, body, agency or commission of this State, or of any county, municipality or school district, includes a maximum age limit, any person, who, heretofore and subsequent to July first, one thousand nine hundred and forty, entered or hereafter, in time of war, shall enter the active military or naval service of the United States or the active service of the Women's Army Corps, the Women's Reserve of the Naval Reserve or any similar organization authorized by the United

States to serve with the Army or Navy, shall be deemed to meet such maximum age requirement, if his actual age, less the period of such service, would meet the maximum age requirement in effect on the date the person entered into such service of the United States."

The public announcements issued by your Department for examinations for Patrolmen and Firemen contain the following provision with respect to age.

"Not less than 21 nor more than 30 years of age at the announced closing date for filing applications for these examinations, except that for veterans who entered active service with the armed forces after July 1, 1940 and prior to April 24, 1945, the maximum age limit is 35 years.

We are of the opinion that the age limits set by the municipal ordinance are valid and must be regarded as controlling. The governing body of each municipality is empowered by R. S. 40:47-1 to make ordinances for the establishment and regulation of a police force. R. S. 40:47-3, as amended, and R. S. 40:47-4 set up restrictions within which the municipalities must operate in the appointment of police officers. We see no reason, however, why a municipality may not make more stringent regulations so long as they comply as well with the statutory prohibitions on the subject. In 62 C. J. S., *Municipal Corporations*, p. 1094 it is stated,

"The appointment of police officers is generally regulated by statute setting up rules of eligibility of prospective appointees; and the municipality may prescribe requirements in addition to, although not in contravention of, those prescribed by statute."

Your announcement is correct as to municipalities which have not set any age limits and as to those in which the age limits were set at 21 years of age to 35 years of age prior to April 24, 1945. However, with respect to Union City and other municipalities with similar ordinances where the age limit was or is more restrictive than that in effect by state law, the more restrictive provisions of the municipal ordinance are controlling. Thus veteran applicants for police and fire positions in Union City must be no older at the time of appointment than 30 years of age, plus a period of time, computed in accordance with the terms of the statute. Even though prior to April 24, 1945 the statutory maximum age was 35, the age of 30 set by the ordinance was "the maximum age requirement in effect" within the meaning of N. J. S. A. 38:23A-2, *supra*.

One other aspect of your announcement requires attention. The statute R. S. 40:47-4, as amended, provides,

"No person shall be appointed a member of the paid fire or police department or force of any municipality who is less than twenty-one or more than thirty years of age * * *"

The critical time is the time of appointment. At that time the appointee must be above the minimum and below the maximum. See *Wentzell v. Steelman*, 8 N. J. Misc. 503 (Sup. Ct. 1930). Your announcement makes the announced closing date the critical time. In this respect it is incorrect. Language should be substituted to make it clear that at the time of appointment the applicant must be within the prescribed age limits.



Yours very truly,

GROVER C. RICHMAN, JR.,
Attorney General

By: JOHN F. CRANE,
Deputy Attorney General

JFC:b.

Appendix XII-B1

	CIVIL CASE INFORMATION STATEMENT (CIS)		FOR USE BY CLERK'S OFFICE ONLY	
	Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule 4:5-1</i> Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>, if information above the black bar is not completed or attorney's signature is not affixed		PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA	
			CHG/CK NO.	
			AMOUNT:	
			OVERPAYMENT:	
		BATCH NUMBER:		
ATTORNEY / PRO SE NAME Philip J. Espinosa, Deputy Attorney General			TELEPHONE NUMBER (609) 376-3300	
COUNTY OF VENUE Hudson				
FIRM NAME (if applicable) N.J. Dept. of Law & Public Safety/Div. of Law (Attorney General's Office)			DOCKET NUMBER (when available) HUD-L-607-18	
OFFICE ADDRESS RJ Hughes Justice Complex 25 Market Street, P.O. Box 114 Trenton, NJ 08625-0114			DOCUMENT TYPE Complaint	
			JURY DEMAND <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
NAME OF PARTY (e.g., John Doe, Plaintiff) State of New Jersey Department of Transportation, Plaintiff-Intervenor		CAPTION State of New Jersey Department of Transportation v. Borough of Leonia, New Jersey		
CASE TYPE NUMBER (See reverse side for listing) 701	HURRICANE SANDY RELATED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A 27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.		
RELATED CASES PENDING? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		IF YES, LIST DOCKET NUMBERS HUD-L-607-18		
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN		
THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.				
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION				
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, IS THAT RELATIONSHIP: <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS		
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO				
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION				
 Do you or your client need any disability accommodations? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		If YES, please identify the requested accommodation		
Will an interpreter be needed? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		If YES, for what language?		
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with <i>Rule 1:38-7(b)</i> .				
ATTORNEY SIGNATURE: <i>/s/ Philip J. Espinosa</i>				

Side 2



CIVIL CASE INFORMATION STATEMENT
(CIS)

Use for initial pleadings (not motions) under Rule 4:5-1

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I - 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

Track II - 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603N AUTO NEGLIGENCE PERSONAL INJURY (non verbal threshold)
- 603Y AUTO NEGLIGENCE PERSONAL INJURY (verbal threshold)
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT OTHER

Track III - 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV - Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Multicounty Litigation (Track IV)

- | | |
|--|---|
| 271 ACCUTANE/ISOTRETINOIN | 292 PELVIC MESH/BARD |
| 274 RISPERDAL/SEROQUEL/ZYPREXA | 293 DEPUY ASR HIP IMPLANT LITIGATION |
| 281 BRISTOL MYERS SQUIBB ENVIRONMENTAL | 295 ALLODERM REGENERATIVE TISSUE MATRIX |
| 282 FOSAMAX | 296 STRYKER REJUVENATE/ABG II MODULAR HIP STEM COMPONENTS |
| 285 STRYKER TRIDENT HIP IMPLANTS | 297 MIRENA CONTRACEPTIVE DEVICE |
| 286 LEVAQUIN | 299 OLMESARTAN MEDOXOMIL MEDICATIONS/BENICAR |
| 287 YAZ/YASMIN/OCELLA | 300 TALC BASED BODY POWDERS |
| 289 REGLAN | 601 ASBESTOS |
| 290 POMPTON LAKES ENVIRONMENTAL LITIGATION | 623 PROPECIA |
| 291 PELVIC MESH/GYNECARE | 624 STRYKER LFIT CoCr V40 FEMORAL HEADS |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category ☐ Putative Class Action ☐ Title 59

EXHIBIT R

BRIAN M. CHEWCASKIE, ESQ.

Attorney ID #021201984

Gittleman Muhlstrock & Chewcaskie

2200 Fletcher Avenue

Fort Lee, NJ 07024

201-944-2300

Attorney for Defendants, Borough of Leonia, Borough of
Leonia Council, Tom Rowe and Judah Zeigler

JACQUELINE ROSA,

Plaintiff

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION:HUDSON COUNTY

Docket No. HUD-L-000607-18

vs.

BOROUGH OF LEONIA, BOROUGH OF
LEONIA COUNCIL, TOM ROWE in his
capacity as acting Borough Clerk of the
Borough of Leonia, JUDAH ZEIGLER, in
his official capacity as Mayor of the Borough
of Leonia, JOHN DOE MAINTENANCE
COMPANIES 1-5,

Defendants

ANSWER & AFFIRMATIVE DEFENSES
TO COMPLAINT FOR
DECLARATORY JUDGMENT AND
FOR AN ACTION IN LIEU OF
PREROGATIVE WRITS

STATE OF NEW JERSEY
DEPARTMENT OF TRANSPORTATION,

Plaintiff-Intervenor

vs.

BOROUGH OF LEONIA, NEW JERSEY,

Defendant

Defendant, Borough of Leonia, by way of Answer to the Complaint for a Declaratory Judgment and for an Action in Lieu of Prerogative Writs, says:

The Borough of Leonia has acted in accordance with applicable statute and regulation regarding traffic ordinances enacted and more specifically, the ordinance in effect at the time of this action, Ordinance No. 2018-5.

THE PARTIES

1. The New Jersey Department of Transportation ("DOT") is an agency in the State of New Jersey and subject to the provisions of applicable statute. N.J.S.A. 27-1A-1 et seq. speaks for itself.

2. The Borough of Leonia ("Leonia") is a municipal corporation in the State of New Jersey and acted in accordance with N.J.S.A. 40A:60-1 et seq., which speaks for itself.

3. Leonia admits the allegations of Paragraph 3 of the Complaint.

4. Leonia admits the allegations of Paragraph 4 of the Complaint.

THE DOT'S LEGAL AUTHORITY TO REGULATE TRAFFIC

5. The Transportation Act of 1966 speaks for itself.

6. N.J.S.A. 27:1A-5 speaks for itself.

7. N.J.S.A. 39:4-8(a) speaks for itself.

8. N.J.S.A. 39:4-8(b) and (c) speaks for itself.

9. N.J.S.A. 39:4-197 speaks for itself.
10. N.J.S.A. 39:4-8(a) speaks for itself.
11. N.J.S.A. 39:4-8(a) and N.J.A.C. 16:27-2.1 speaks for itself.
12. Leonia denies the allegations of Paragraph 12 of the Complaint.
13. Leonia denies the allegations of Paragraph 13 of the Complaint.
14. The 1955 Attorney General opinion speaks for itself and is not applicable to the ordinance that is the subject of this matter.

15. Leonia denies the allegations of Paragraph 15 of the Complaint.

LEONIA'S INVALID TRAFFIC ORDINANCES

16. Leonia denies that the ordinances are invalid and were adopted in accordance with State Legislative authority and applicable provisions of case law. Leonia admits that the ordinance in effect at this time is Ordinance No. 2018-5.

17. The relevant ordinances speak for themselves.
18. Ordinance No. 2017-19 speaks for itself.
19. Ordinance No. 2017-19 speaks for itself.
20. Ordinance No. 2017-19 speaks for itself.
21. Ordinance No. 2018-2 speaks for itself.
22. Ordinance No. 2018-2 speaks for itself.
23. Ordinance No. 2018-5 speaks for itself.

24. Ordinance No. 2018-5 speaks for itself.

25. Ordinance No. 2018-5 speaks for itself.

26. Leonia denies the allegations of Paragraph 26 of the Complaint.

27. Leonia denies the allegations of Paragraph 27 of the Complaint.

28. Leonia denies the allegations of Paragraph 28 of the Complaint.

29-35. Leonia does not respond to allegations that reference published news reports as same are not factual allegations.

36. The letter from the Attorney General's Office of March 16, 2018 speaks for itself; however, the letter did not indicate any direction from the State agency concerning traffic regulation, to wit, the New Jersey Department of Transportation, who had any concerns with regard to the enactment of ordinances as same appears to be a political and not a legal response by the Attorney General.

37. Leonia admits that the DOT staff and representatives of Leonia met on April 4, 2018. Leonia received a one-page letter from the DOT on May 8, 2018. Leonia immediately responded to that letter on May 10, 2018 and to date, has not received a response. The DOT, which is the State agency responsible for the enactment of traffic laws has not taken an interest in this matter which has taken on a political genesis.

38. Leonia denies the allegations of Paragraph 38 of the Complaint.

FIRST COUNT
(Declaratory Judgment)

39. Leonia repeats and reiterates each and every answer to the Complaint as if fully set forth at length herein.

40. The Declaratory Judgment Act, N.J.S.A. 2A:16-50 et seq. speaks for itself.

41. Leonia denies the allegations of Paragraph 41 of the Complaint.

WHEREFORE, the Borough of Leonia demands judgment against the Plaintiff as follows:

- a. Dismissing the Complaint
- b. Cost of suit and attorney's fees
- c. For such other relief the Court deems just and equitable.

SECOND COUNT
(Declaratory Judgment)

42. Leonia repeats and reiterates each and every answer to the Complaint as if fully set forth at length herein.

43. The Declaratory Judgment Act, N.J.S.A. 2A:16-50 et seq. speaks for itself.

44. Leonia denies the allegations of Paragraph 44 of the Complaint.

WHEREFORE, the Borough of Leonia demands judgment against the Plaintiff as follows:

- a. Dismissing the Complaint
- b. Cost of suit and attorney's fees

- c. For such other relief the Court deems just and equitable.

THIRD COUNT
(Declaratory Judgment)

45. Leonia repeats and reiterates each and every answer to the Complaint as if fully set forth at length herein.

46. The Declaratory Judgment Act, N.J.S.A. 2A:16-50 et seq. speaks for itself.

47. Leonia denies the allegations set forth in Paragraph 47 of the Complaint.

WHEREFORE, the Borough of Leonia demands judgment against the Plaintiff as follows:

- a. Dismissing the Complaint
- b. Cost of suit and attorney's fees
- c. For such other relief the Court deems just and equitable.

FOURTH COUNT
(Declaratory Judgment)

48. Leonia repeats and reiterates each and every answer to the Complaint as if fully set forth at length herein.

49. The Declaratory Judgment Act, N.J.S.A. 2A:16-50 et seq. speaks for itself.

50. Leonia denies the allegations set forth in Paragraph 50 of the Complaint.

WHEREFORE, the Borough of Leonia demands judgment against the Plaintiff as follows:

- a. Dismissing the Complaint

- b. Cost of suit and attorney's fees
- c. For such other relief the Court deems just and equitable.

FIFTH COUNT
(Action in Lieu of Prerogative Writ)

51. . Leonia repeats and reiterates each and every answer to the Complaint as if fully set forth at length herein.

52. Leonia denies the allegations of Paragraph 52 of the Complaint.

53. Leonia denies the allegations of Paragraph 53 of the Complaint.

54. Leonia denies the allegations of Paragraph 54 of the Complaint.

55. Leonia denies the allegations of Paragraph 55 of the Complaint as the actions undertaken by the Office of the Attorney General are political and not in accordance with applicable statute or regulation.

WHEREFORE, the Borough of Leonia demands judgment against the Plaintiff as follows:

- a. Dismissing the Complaint
- b. Cost of suit and attorney's fees
- c. For such other relief the Court deems just and equitable.

FIRST AFFIRMATIVE DEFENSE

Plaintiff fails to assert a claim against this Defendant upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrines of legal and equitable waiver.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrines of legal and equitable estoppel.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because they are asserted in bad faith and purely for purposes of harassment and delay.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims against Defendant are frivolous and fees should be awarded these Defendant pursuant to N.J.S.A. 2A:15-59.1.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint is time barred by virtue of the provisions of R. 4:69-6(b)(3).

EIGHTH AFFIRMATIVE DEFENSE

Defendant denies any violation of public policy in the State of New Jersey.

NINTH AFFIRMATIVE DEFENSE

Plaintiff fails to set forth a claim of Constitutional dimension.

TENTH AFFIRMATIVE DEFENSE

The Plaintiff is barred for failure to state a claim for which relief can be granted.

ELEVENTH AFFIRMATIVE DEFENSE

Defendant did not violate any duty owed to the Plaintiff under common law, statute, regulations or standards.

TWELFTH AFFIRMATIVE DEFENSE

Defendant acted on reasonable grounds.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claim is a frivolous action without any reasonable basis in law or equity, and cannot be supported by a good faith argument for extension, modification or reversal of existing law.

FOURTEENTH AFFIRMATIVE DEFENSE

At all times relevant hereto, Defendant acted within the scope of its lawful authority or apparent authority.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendant has complied with all legal requirements, including, but not limited to, having acted in good faith and having exercised fair discretion in determining this matter.

SIXTEENTH AFFIRMATIVE DEFENSE

Defendant reserves the right to assert additional defenses upon completion of discovery and investigation.

SEVENTEENTH AFFIRMATIVE DEFENSE

The actions of Leonia were undertaken in accordance with applicable case law, including, but not limited to The County Board of Arlington County, Virginia vs. Richards, 434US976 (1977).

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Brian M. Chewcaskie is hereby designated as trial counsel.

CERTIFICATION PURSUANT TO RULE 4:5-1

I hereby certify that to the best of my knowledge, based on information available to me at this office, the matter in controversy is not the subject of any other action pending in any court or any pending arbitration proceeding and no additional parties are known at this time that should be joined in this action. I further certify that to the best of my knowledge, no other action or arbitration proceeding is contemplated.

CERTIFICATION

I hereby certify that the within Answer, Affirmative Defenses and Designation of Trial Council have been served within the time prescribed by the Rules of Court or as extended by Order of the Court.

GITTLEMAN, MUHLSTOCK & CHEWCASKIE, L.L.P.
Attorneys for Defendants, Borough of Leonia, Borough of
Leonia Council, Tom Rowe and Judah Zeigler

By: 

Brian M. Chewcaskie, Esq.

Dated: July 2, 2018

Civil Case Information Statement

Case Details: HUDSON | Civil Part Docket# L-000607-18

Case Caption: ROSA JACQUELIN VS BOROUGH OF LEONIA

Case Initiation Date: 01/30/2018

Attorney Name: BRIAN M CHEWCASKIE

Firm Name: GITTLEMAN MUHLSTOCK & CHEWCASKIE LLP

Address: 2200 FLETCHER AVE
FORT LEE NJ 07024

Phone:

Name of Party: DEFENDANT : BOROUGH OF LEONIA

Name of Defendant's Primary Insurance Company
(if known): None

Case Type: ACTIONS IN LIEU OF PREROGATIVE WRITS

Document Type: Answer

Jury Demand: NONE

Hurricane Sandy related? NO

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

07/02/2018
Dated

/s/ BRIAN M CHEWCASKIE
Signed

EXHIBIT S

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 114
Trenton, New Jersey 08625
Attorney for the State of New Jersey
Department of Transportation
By: Philip J. Espinosa (Attorney ID No.: 030311988)
Deputy Attorney General
(609) 376-3300

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - HUDSON COUNTY
DOCKET NO.: HUD-L-607-18

JACQUELINE ROSA,	:	
	:	
Plaintiff,	:	Civil Action
	:	
v.	:	
	:	
BOROUGH OF LEONIA, ET AL.,	:	
	:	
Defendants.	:	NOTICE OF MOTION FOR SUMMARY
	:	JUDGMENT

STATE OF NEW JERSEY	:	
DEPARTMENT OF TRANSPORTATION,	:	
	:	
Plaintiff-Intervenor,	:	
	:	
v.	:	
	:	
BOROUGH OF LEONIA, NEW	:	
JERSEY,	:	
	:	
Defendant.	:	

To: Motion's Clerk and All Counsel of Record

TAKE NOTICE that the undersigned will apply to the above named court located at the Hudson County Administration Building, 595 Newark Avenue, Jersey City, NJ 07306, on August 17, 2018, at 9:00 a.m., on behalf of the plaintiff-intervenor State of New Jersey Department of Transportation ("DOT") for an order for summary judgment declaring that traffic ordinances numbers 2017-19, 2018-2 and 2018-5 (hereinafter collectively referred to as "the Ordinances") of the Borough of Leonia ("Leonia"), are null and void, and legally invalid as a matter of law; and enjoining and permanently restraining Leonia from the further enforcement of the Ordinances, including but not limited to the use of signage regarding the Ordinances, police officials notifying motorists about the Ordinances, and the issuance of traffic citations based on the Ordinances.

The DOT will rely on the attached brief, statement of material facts, certification, and exhibits, which contain the grounds for the relief sought.

Pursuant to Rule 1:6-2(d), the undersigned respectfully requests oral argument.

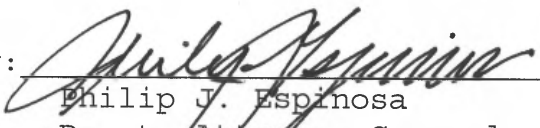
A proposed form of order is attached.

No pre-trial conference, arbitration proceeding,
calendar call or trial date has been set.

Discovery in this case is scheduled to be completed on
May 24, 2019.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: _____


Philip J. Espinosa
Deputy Attorney General
Attorney ID No.: 030311988

Dated: July 11, 2018

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 114
Trenton, New Jersey 08625
Attorney for the State of New Jersey
Department of Transportation
By: Philip J. Espinosa (Attorney ID No.: 030311988)
Deputy Attorney General
(609) 376-3300

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - HUDSON COUNTY
DOCKET NO.: HUD-L-607-18

JACQUELINE ROSA,	:	
Plaintiff,	:	Civil Action
v.	:	
BOROUGH OF LEONIA, ET AL.,	:	
Defendants.	:	ORDER FOR SUMMARY JUDGMENT

STATE OF NEW JERSEY	:	
DEPARTMENT OF TRANSPORTATION,	:	
Plaintiff-Intervenor,	:	
v.	:	
BOROUGH OF LEONIA, NEW	:	
JERSEY,	:	
Defendant.	:	

This matter having been opened to the court by a motion for summary judgment by Gurbir S. Grewal, Attorney General of New Jersey, by Philip J. Espinosa, Deputy Attorney General, attorney for the plaintiff-intervenor State of New Jersey Department of Transportation, and the court having considered this matter, and for good cause having been shown;

IT IS on this day of , 2018, ORDERED:

1. Traffic ordinances numbers 2017-19, 2018-2 and 2018-5 (hereinafter collectively referred to as "the Ordinances") of the Borough of Leonia ("Leonia"), are hereby declared to be null and void, and legally invalid as a matter of law.

2. Leonia is hereby enjoined and permanently restrained from the further enforcement of the Ordinances, including but not limited to the use of signage regarding the Ordinances, police officials notifying motorists about the Ordinances, and the issuance of traffic citations based on the Ordinances.

_____ Opposed

_____ Unopposed

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 114
Trenton, New Jersey 08625
Attorney for the State of New Jersey
Department of Transportation
By: Philip J. Espinosa (ID No.: 030311988)
Deputy Attorney General
(609) 376-3300

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - HUDSON COUNTY
DOCKET NO.: HUD-L-607-18

JACQUELINE ROSA, :
 :
Plaintiff, : Civil Action
 :
v. :

BOROUGH OF LEONIA, ET AL., :
 :
Defendants. :

STATE OF NEW JERSEY :
DEPARTMENT OF TRANSPORTATION, :
 :
Plaintiff-Intervenor, :
 :
v. :

STATEMENT OF MATERIAL FACTS
ON BEHALF OF THE NEW JERSEY
DEPARTMENT OF TRANSPORTATION

BOROUGH OF LEONIA, NEW :
JERSEY, :
 :
Defendant. :

1. The Borough of Leonia ("Leonia") has adopted traffic ordinances, Ordinance Nos. 2017-19, 2018-2 and 2018-5 (hereinafter collectively referred to as "the Ordinances"). (A copy of the Ordinances is attached as DOT Exhibits B, C and D.)

2. By the Ordinances, which restrict traffic on most of Leonia's streets during certain hours unless a person (a) is a resident of a listed street needing access to the person's home or can demonstrate a documented need to access a residence on the street or parts of streets as described, or (b) is traveling to and/or from a Leonia destination, Leonia has prohibited through traffic regarding the streets included within the Ordinances during the applicable hours. In other words, by the Ordinances, Leonia has established "no through streets" regarding the streets included within the Ordinances. (DOT Certification of Mark A. Hiestand, pages 2-3, paragraph 4.)

3. Leonia is located within close proximity to the George Washington Bridge and to several state and county highways, including but not limited to, the New Jersey Turnpike, and State Routes 4, 46 and 80. (DOT Certification of Mark A. Hiestand, page 3, paragraph 5.)

4. In addition, a portion of State Route 93, also known as Grand Avenue, is located within the municipal

boundaries of Leonia. (DOT Certification of Mark A. Hiestand, page 3, paragraph 6.)

5. Leonia is also adjacent to several other municipalities within Bergen County, including Fort Lee, Englewood, Ridgely Park, Palisades Park, and Teaneck. (DOT Certification of Mark A. Hiestand, page 3, paragraph 7.)

6. A portion of Bergen County Route 56 III (3), also known as Degraw Avenue and Fort Lee Road, is located within Leonia. (DOT Certification of Mark A. Hiestand, page 3, paragraph 8.)


7. The Ordinances have an impact on a State highway as defined by N.J.A.C. 16:27-2.1 because the Ordinances (a) impact a State highway at State Route 93 at the following intersections: Oakdene Avenue, Moore Avenue, Ames Avenue, Sylvan Avenue, Highwood Avenue, Park Avenue, Christie Street, Maple Street, Prospect Street, Palisade Avenue, Hillside Avenue, Cottage Place, Harrison Street, Christie Heights Street, Vreeland Avenue, Van Orden Avenue, Overlook Avenue, Longview Avenue and Lakeview Avenue; and (b) impact traffic within 500 feet of State Route 93 because Leonia has installed signs on the aforementioned municipal streets adjacent to the state highway. (DOT Certification of Mark A. Hiestand, page 4, paragraph 11.)

8. Leonia did not submit the Ordinances to the DOT Commissioner for approval. (DOT Certification of Mark A. Hiestand, page 5, paragraph 12.)

Respectfully submitted,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By:


Philip J. Espinosa
Deputy Attorney General
(Attorney ID No.: 030311988)

Dated: July 11, 2018

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 114
Trenton, New Jersey 08625
Attorney for the State of New Jersey
Department of Transportation
By: Philip J. Espinosa (Attorney ID No.: 030311988)
Deputy Attorney General
(609) 376-3300

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - HUDSON COUNTY
DOCKET NO.: HUD-L-607-18

JACQUELINE ROSA,	:	
	:	
Plaintiff,	:	<u>Civil Action</u>
	:	
v.	:	
	:	
BOROUGH OF LEONIA, ET AL.,	:	
	:	
Defendants.	:	

STATE OF NEW JERSEY	:	
DEPARTMENT OF TRANSPORTATION,	:	
	:	
Plaintiff-Intervenor,	:	
	:	
v.	:	BRIEF IN SUPPORT OF MOTION FOR
	:	SUMMARY JUDGMENT ON BEHALF OF
	:	THE STATE OF NEW JERSEY
BOROUGH OF LEONIA, NEW	:	DEPARTMENT OF TRANSPORTATION
JERSEY,	:	
	:	
Defendant.	:	

PRELIMINARY STATEMENT

The Borough of Leonia (Leonia), without legal authority, has recently adopted ordinances that, in effect, have established "no through streets" on most of Leonia's streets for impacted persons during specified hours. The ordinances prohibit traffic during certain hours on most of the streets within Leonia, unless a person operating a vehicle is a resident of a listed street needing access to the person's home or can demonstrate a documented need to access a residence on the street or parts of streets as described, or is traveling to and/or from a Leonia destination.

Leonia did not have legal authority to adopt the ordinances. In this regard, Leonia did not have legal authority to establish "no through streets" on the listed streets during the designated hours. In addition, Leonia did not have legal authority to regulate traffic based on a residency classification or based on whether a person is seeking to travel to and/or from a destination in Leonia. Further, although the ordinances have an impact on a State highway as defined by the applicable regulation, Leonia failed to submit the ordinances for approval by the Commissioner of the State of New Jersey Department of Transportation ("DOT"), as required by Title 39.

Based on this, the DOT by this motion respectfully requests an order declaring, as a matter of law, that the ordinances are null and void and permanently enjoining Leonia from enforcing the ordinances.

STATEMENT OF FACTS

Leonia is incorporated under the borough form of government. N.J.S.A. 40A:60-1 to -8.1. The governing body of Leonia consists of the mayor and six council members, all of whom are elected at-large. N.J.S.A. 40A:60-2. The borough is comprised of multiple departments, including a police department. Leonia, NJ, Code & Ordinances, § 49-1.

Leonia is located within close proximity to the George Washington Bridge and to several state and county highways, including but not limited to, the New Jersey Turnpike, and State Routes 4, 46 and 80. (DOT Certification of Mark A. Hiestand, page 3, paragraph 5.) In addition, a portion of State Route 93, also known as Grand Avenue, is located within the municipal boundaries of Leonia. (DOT Certification of Mark A. Hiestand, page 3, paragraph 6.) Leonia is also adjacent to several other municipalities within Bergen County, including Fort Lee, Englewood, Ridgely Park, Palisades Park, and Teaneck. (DOT Certification of Mark A. Hiestand, page 3, paragraph 7.) A

portion of Bergen County Route 56 III (3), also known as Degraw Avenue and Fort Lee Road, is located within Leonia. (DOT Certification of Mark A. Hiestand, page 3, paragraph 8.)

On or about December 4, 2017, the Mayor and Council of Leonia adopted Ordinance Number 2017-19, which amended and supplemented Chapter 194 of Leonia's Municipal Code and added two new provisions, Sections 194-25.1 and 194-49. (DOT Exhibit B.) Section 194-25.1 of Leonia's Municipal Code, identified as Ordinance 2017-19, provides:

Closing of Certain Streets. No person shall operate a vehicle on those streets or parts of streets as described in Schedule XVIII (§ 194-49) attached to and made a part of this Chapter during the times of the days indicated in said Schedule unless that person is a resident of the said street needing access to his home or can demonstrate or document a need to access a residence on the street or parts of streets as described.

[DOT Exhibit B.]

Section 194-49 of Leonia's Municipal Code, identified as Ordinance 2017-19, provides a list of travel restrictions and road closures affecting approximately 70 roads and intersections during the hours of 6:00 a.m. to 10:00 a.m. and 4:00 p.m. to 9:00 p.m. (DOT Exhibit B.)

On or about January 17, 2018, the Mayor and Council of Leonia adopted Ordinance Number 2018-2, which amended and supplemented Chapter 194 of Leonia's Municipal Code, and added a new provision, Section 194-25.2. Section 194-25.2 of Leonia's Municipal Code, identified as Ordinance Number 2018-2, provides for a \$200 penalty for any person convicted of violating Section 194-25.1 "or imprisonment for a term of not exceeding 15 days, or both." (DOT Exhibit C.)

On or about March 5, 2018, Leonia adopted Ordinance Number 2018-5, which amended Sections 194-25.1 and 194-149 of Leonia's Municipal Code. (DOT Exhibit D.) Section 194-25.1 of Leonia's Municipal Code, as amended in its entirety by Ordinance 2018-5, provides:

Closing of Certain Streets. No person shall operate a vehicle on those streets or parts of streets as described in Schedule XVIII (§ 194-49) attached to and made part of Chapter 194 during the times of the days indicated in said Schedule unless that person (a) Is a resident of said street needing access to his home or can demonstrate a documented need to access a residence on the street or parts of streets as described; or (b) Is traveling to and/or from a Leonia destination.

[DOT Exhibit D.]

Section 194-49 of Leonia's Municipal Code, as amended by Ordinance 2018-5, provides an amended list of travel

restrictions and road closures affecting more than 75 roads and intersections during the hours of 6:00 a.m. to 10:00 a.m. and 4:00 p.m. to 9:00 p.m. (DOT Exhibit D.)

These traffic ordinances, Ordinance Nos. 2017-19, 2018-2 and 2018-5, are hereinafter collectively referred to as "the Ordinances." (DOT Exhibits B, C and D.)

By the Ordinances, Leonia has prohibited through traffic regarding the streets included within the Ordinances during the applicable hours. (DOT Certification of Mark A. Hiestand, pages, 2-3, paragraph 4.) In other words, by the Ordinances, Leonia has established "no through streets" regarding the streets included within the Ordinances. (DOT Certification of Mark A. Hiestand, page, 3, paragraph 4.)

In addition, the Ordinances have an impact on a State highway as defined by N.J.A.C. 16:27-2.1 because the Ordinances (a) impact a State highway at State Route 93 at the following intersections: Oakdene Avenue, Moore Avenue, Ames Avenue, Sylvan Avenue, Highwood Avenue, Park Avenue, Christie Street, Maple Street, Prospect Street, Palisade Avenue, Hillside Avenue, Cottage Place, Harrison Street, Christie Heights Street, Vreeland Avenue, Van Orden Avenue, Overlook Avenue, Longview Avenue and Lakeview Avenue; and (b) impact traffic within 500

feet of State Route 93 because Leonia has installed signs on the aforementioned municipal streets adjacent to the state highway. (DOT Certification of Mark A. Hiestand, page 4, paragraph 11.) Although the Ordinances have an impact on a State highway, as defined by N.J.A.C. 16:27-2.1, Leonia did not submit the Ordinances to the DOT Commissioner for approval. (DOT Certification of Mark A. Hiestand, page 5, paragraph 12.)

According to published news reports, the purpose of the Ordinances was to induce navigational apps to remove Leonia streets from their algorithms. (Lisa W. Foderaro, Navigation Apps Are Turning Quiet Neighborhoods Into Traffic Nightmares, N.Y. TIMES (Dec. 24, 2017), <http://www.nytimes.com/2017/12/24/nyregion/traffic-apps-gps-neighborhoods.html>.) Published news reports and Leonia's website indicate that Leonia has been offering residents yellow hang tags in order to identify their vehicles for purposes of accessing the Leonia roads with restricted access pursuant to the Ordinances. (John Surico, What Happens When a City Bans Non-Resident Drivers? CITYLAB (Apr. 18, 2018), <http://www.citylab.com/transportation/2018/04/the-small-town-that-took-on-waze/558215>; see also Leonia Safe Streets, Borough

of Leonia,
[http://www.leonianj.gov/depts/leonia_safe_streets_information.](http://www.leonianj.gov/depts/leonia_safe_streets_information.htm)
htm ; last visited May 15, 2018.)

In addition, according to published news reports, the Mayor of Leonia has indicated that drivers without yellow tags may be stopped and questioned by Leonia's police department. (Dave Carlin, Leonia, New Jersey: Town wants residential streets removed from GPS apps, may fine drivers \$200, WCBS-TV/CNN (Jan. 10, 2018, 5:41 AM), <http://www.wptv.com/news/local-news/water-cooler/leonia-new-jersey-town-wants-residential-streets-removed-from-gps-apps-may-fine-drivers-200>.) Leonia's mayor stated, according to a news report, "The first thing the officer is going to say is, 'Do you have business in Leonia?'" (Dave Carlin, Leonia, New Jersey: Town wants residential streets removed from GPS apps, may fine drivers \$200, WCBS-TV/CNN (Jan. 10, 2018, 5:41 AM), <http://www.wptv.com/news/local-news/water-cooler/leonia-new-jersey-town-wants-residential-streets-removed-from-gps-apps-may-fine-drivers-200>.)

Published news reports also indicate that, for purposes of enforcing the Ordinances, Leonia posted "Do Not Enter" signs with the words "Residents Exempt" printed below. (Svetlana Shkolnikova, 'Residents and Leonia Destinations Only'

to replace 'Do Not Enter' signs barring commuters, NORTHJERSEY.COM (Feb. 22, 2018 10:23 PM), <http://www.northjersey.com/story/news/bergen/leonia/2018/02/21/leonia-drafts-new-traffic-signage-help-businesses/359675002>.) In addition, according to published news reports, Leonia later proposed posting amended signs in order to appeal to Leonia's businesses. (Leonia To Get Friendlier Signs Banning GWB Shortcut Seekers, CBS NEW YORK/AP (Feb. 15, 2018), <http://newyork.cbslocal.com/2018/02/15/leonia-new-road-signs>; Svetlana Shkolnikova, Leonia amends controversial road closure ordinance to boost business, NORTHJERSEY.COM (March 5, 2018 11:31 PM), <http://www.northjersey.com/story/news/bergen/leonia/2018/03/05/leonia-amends-controversial-road-closures-law-boost-business/390951002>.) Traffic-restricting signs remain posted on Leonia's roads and Leonia's police department continues to enforce the Ordinances, according to published news reports. (Anthony Johnson, Road signs in Leonia causing rift between town, state of New Jersey, WABC-TV (May 3, 2018), <http://abc7ny.com/traffic/road-signs-causing-rift-in-new-jersey-town/3424745>.)

On March 16, 2018, the Attorney General's Office wrote to Leonia's Counsel explaining the Ordinances do not comply with the applicable Title 39 statutes, or the 1955 Attorney General opinion and thus they are invalid. (DOT Exhibits A and F.) The Attorney General's Office directed Leonia to "immediately refrain from enforcing the above referenced ordinances" and offered to facilitate a meeting between Leonia and the DOT officials to discuss other, appropriate measures to address Leonia's traffic concerns. (DOT Exhibit F.)

DOT traffic engineering staff met with Leonia officials on April 4, 2018 to discuss potential traffic control options. (DOT Certification of Mark A. Hiestand, page 5, paragraph 13.) The DOT then proposed potential traffic control options for Leonia's consideration, as confirmed in the DOT's letter of May 8, 2018 (DOT Exhibit E). (DOT Certification of Mark A. Hiestand, page 5, paragraph 14.) Such potential traffic control options would require the consent of the DOT, the County of Bergen, and/or potentially adjacent municipalities, depending on which potential traffic control options Leonia would want to explore. (DOT Certification of Mark A. Hiestand, page 5, paragraph 14.) Such a determination could be reached by the DOT following an investigation by the DOT, and the DOT's

determination of whether the potential traffic control options would be in the interest of safety and the expedition of traffic on the public highways, pursuant to Title 39 and the Manual on Uniform Traffic Control Devices. (DOT Certification of Mark A. Hiestand, page 5, paragraph 14.) However, the DOT has received no requests from Leonia to act upon any of the potential options included in the DOT's letter of May 8, 2018. (DOT Certification of Mark A. Hiestand, page 5, paragraph 15.)

LEGAL ARGUMENT

POINT I

LEONIA'S ORDINANCES SHOULD BE DECLARED NULL AND VOID
AS A MATTER OF LAW.

The Declaratory Judgment Act, N.J.S.A. 2A:16-50 to -62, authorizes courts to declare rights, status and other legal relations so as to afford litigants relief from uncertainty and insecurity. Chamber of Commerce v. State, 89 N.J. 131, 140 (1982). To maintain such an action, there must be a "justiciable controversy" between adverse parties, and plaintiff must have an interest in the suit. Ibid. As discussed in this brief below, these two requirements are satisfied.

The "Transportation Act of 1966" ("Transportation Act") authorizes the Commissioner of Transportation (the "DOT Commissioner") to develop and promote efficient transportation services and coordinate the activities of the DOT with other public agencies and authorities. N.J.S.A. 27:1A-5. The DOT, pursuant to N.J.S.A. 27:1A-1, is also responsible for promoting an "efficient, fully integrated and balanced transportation system" throughout New Jersey.

In addition, pursuant to N.J.S.A. 39:4-8(a), "[e]xcept as otherwise provided in this section, no ordinance, resolution, or regulation concerning, regulating, or governing traffic or

traffic conditions, adopted or enacted by any board or body having jurisdiction over highways, shall be of any force or effect unless the same is approved by the [DOT] commissioner, according to law." (Explanation added.) The DOT Commissioner is not required to approve any ordinance, resolution, or regulation, unless, after investigation by the Commissioner the same shall appear to be "in the interest of safety and the expedition of traffic on the public highways." N.J.S.A. 39:4-8(a).

The Legislature in N.J.S.A. 39:4-8(b) and (c) permits municipalities to adopt traffic ordinances without the DOT Commissioner's approval only for those traffic measures listed in either N.J.S.A. 39:4-8(c), subject to the provisions of N.J.S.A. 39:4-138, or N.J.S.A. 39:4-197. For example, the Legislature in N.J.S.A. 39:4-197 permits municipalities to alter speed limitations; limit the use of streets to certain classes of vehicles; designate one way streets; and regulate street parking.

Additionally, pursuant to N.J.S.A. 39:4-8(a), before the adoption of any municipal or county ordinance, resolution, or regulation which places any impact on roadways in an adjoining municipality or county, the governing board or body of

the municipality must provide appropriate notice to the adjoining municipality or county.

Further, pursuant to N.J.S.A. 39:4-8(a), notwithstanding any other provision of N.J.S.A. 39:4-8 to the contrary, any municipal or county ordinance, resolution, or regulation which places any impact on a State highway requires the approval of the DOT Commissioner. "Impact on a State highway" or "impact to a State highway" is defined by N.J.A.C. 16:27-2.1 to mean any traffic control device on a non-State highway that is proposed for installation or any traffic regulation applicable to a non-State highway: (1) at a State highway intersection; (2) within 500 feet of a State highway; or (3) at a distance greater than 500 feet from a State highway but has a resultant queue that extends within 500 feet or less from a State highway.

The Legislature has not established authority under Title 39, or elsewhere, for a municipality to limit access to certain streets depending on whether a person is classified as a resident or based on whether a person is traveling to a destination within a municipality.

In addition, the Legislature has not established authority in Title 39, or elsewhere, for a municipality to

establish "no through" streets. Further, the Attorney General of New Jersey opined in 1955 that the power to designate so-called "no through" streets is not among the powers granted to a municipality by N.J.S.A. 39:4-197, nor is such power granted by any other provision of our statutes. Formal Opinion No. 5, N.J. Attorney General (1955) (DOT Exhibit A.) As the Attorney General explained, "[t]here is no inherent power vested in a municipality by which it may legally restrict the right of the public to the free use of streets and roads. Any right of the municipality to pass ordinances and resolutions regarding the flow of traffic over its streets and highways can arise only by legislative grant; and there has been none." Ibid. (DOT Exhibit A.) This Attorney General opinion remains legally valid because, while the Legislature has amended Title 39 several times, most recently in 2008 to extend certain additional traffic regulation powers to municipalities and counties, it has never been amended to extend to municipalities the authority to adopt "no through" street ordinances, or to limit access to municipal streets based on a residency classification or on whether a person was seeking to access a destination within the municipality.

A. The Ordinances, in effect, create "no-through streets," even though pursuant to Title 39, Leonia has no such legal authority.

By the Ordinances, which restrict traffic on most of Leonia's streets during certain hours unless a person (a) is a resident of a listed street needing access to the person's home or can demonstrate a documented need to access a residence on the street or parts of streets as described, or (b) is traveling to and/or from a Leonia destination, Leonia has prohibited through traffic regarding the streets included within the Ordinances during the applicable hours. (DOT Certification of Mark A. Hiestand, pages, 2-3, paragraph 4.) In other words, by the Ordinances, Leonia has established "no through streets" regarding the streets included within the ordinances. (DOT Certification of Mark A. Hiestand, pages, 2-3, paragraph 4.)

However, any right of Leonia to pass such ordinances restricting the flow of traffic over its streets could only have arisen by legislation, and there has been none. (DOT Exhibit A.) The Legislature has not, however, established authority under Title 39 for Leonia to have established such "no through" streets. The power to designate so-called "no through" streets is not among the powers granted to Leonia by N.J.S.A. 39:4-197, nor is such power granted by any other provision of our

statutes. Accordingly, the Ordinances should be declared null and void as a matter of law. R. 4:46-2.

B. Leonia did not have legal authority to adopt the Ordinances because they regulate traffic based on a residency classification or based on whether a person is seeking to travel to and/or from a Leonia destination.

The Legislature has not established authority under Title 39, or elsewhere under any provision of our statutes, for Leonia through the Ordinances to have restricted access to certain streets depending on a residency classification or based on whether a person is seeking to travel to and/or from a Leonia destination. And while the Legislature has amended Title 39 several times, most recently in 2008, to extend certain additional traffic regulation powers to municipalities and counties, the Legislature has never extended such authority to municipalities. Accordingly, the Ordinances should be declared null and void as a matter of law. R. 4:46-2.

C. The Ordinances are null and void because they create an impact on a State highway and Leonia did not submit the Ordinances to the DOT Commissioner for approval.

The Ordinances have an impact on a State highway as defined by N.J.A.C. 16:27-2.1 because the Ordinances (a) impact a State highway at State Route 93 at the following intersections: Oakdene Avenue, Moore Avenue, Ames Avenue, Sylvan Avenue, Highwood Avenue, Park Avenue, Christie Street, Maple

Street, Prospect Street, Palisade Avenue, Hillside Avenue, Cottage Place, Harrison Street, Christie Heights Street, Vreeland Avenue, Van Orden Avenue, Overlook Avenue, Longview Avenue and Lakeview Avenue; and (b) impact traffic within 500 feet of State Route 93 because Leonia has installed signs on the aforementioned municipal streets adjacent to the state highway. (DOT Certification of Mark A. Hiestand, page 4, paragraph 11.) However, despite the fact that the Ordinances have an impact on a State highway as defined by N.J.A.C. 16:27-2.1, Leonia failed to submit the Ordinances to the DOT Commissioner for approval, as required by N.J.S.A. 39:4-8(a). (DOT Certification of Mark A. Hiestand, page 5, paragraph 12.) Accordingly, the Ordinances should be declared null and void as a matter of law. R. 4:46-2.

POINT II

BECAUSE LEONIA'S ORDINANCES ARE NULL AND VOID AS A
MATTER OF LAW, LEONIA SHOULD BE PERMANENTLY ENJOINED
FROM ENFORCING THE ORDINANCES.

Regarding an action in lieu of prerogative writs, prior to the adoption of the New Jersey Constitution of 1947, persons aggrieved by action or inaction of state or local administrative agencies could seek review by applying for one of the prerogative writs. Pascucci v. Vagott, 71 N.J. 40, 51-52 (1976). The writs were superseded by the 1947 Constitution, which provided that, in lieu thereof, review, hearing and relief was to be had in in the Superior Court, on terms and in the manner provided by rules of the Supreme Court, as of right. N.J. Const. art. VI, § 5, ¶ 4. Id. at 52. The 1947 Constitution's prerogative writ clause was intended to streamline and strengthen the traditional prerogative writs that were available in the pre-1947 Supreme Court. In re LiVolsi, 85 N.J. 576, 593 (1981). The clause consolidated the established prerogative writs of certiorari, quo warranto, prohibition, and mandamus into one action that guaranteed a petitioner the same rights to appeal as were provided by those writs. Alexander's Dep't Stores of N.J., Inc. v. Borough of Paramus, 125 N.J. 100, 107 (1991).

In addition, Rule 4:69-1 provides that "[r]eview, hearing and relief heretofore available by prerogative writs and not available under R. 2:2-3 or R. 8:2 shall be afforded by an action in the Law Division, Civil Part, of the Superior Court." In other words, any action available under a pre-1947 prerogative writ that is not an appeal of a state administrative agency decision or under the jurisdiction of the Tax Court must be filed in the Law Division pursuant to Rule 4:69-1. See Selobyt v. Keough-Dwyer Corr. Facility, 375 N.J. Super. 91, 96 (App. Div. 2005).

Actions in lieu of prerogative writs vest courts with jurisdiction to review the actions of municipal agencies to ensure that they are acting within their jurisdiction and according to law. Paruszewski v. Tp. of Elsinboro, 154 N.J. 45, 58 (1998). And it is well established that the interpretation of an ordinance is purely a legal matter as to which an administrative agency has no peculiar skill superior to the courts. Grancagnola v. Planning Bd. of Verona, 221 N.J. Super. 71, 75 (App. Div. 1987). The Superior Court applies a de novo standard of judicial review when interpreting a local ordinance. Id. at 76 n.5; see also, Mayflower Securities v. Bureau of Securities, 64 N.J. 85, 93 (1973) (the interpretation of

legislative enactments is a judicial function and not a matter of administrative expertise).

Here, Leonia does not have legal authority to have restricted traffic as it has done in the Ordinances. And the circumstances presented involve public interest considerations that call out for judicial intervention through the issuance of an order that permanently enjoins Leonia from further enforcing the Ordinances, including but not limited to the use of signage regarding the Ordinances, municipal police officials notifying motorists about the Ordinances, and the issuance of traffic citations based on the Ordinances. R. 4:46-2.

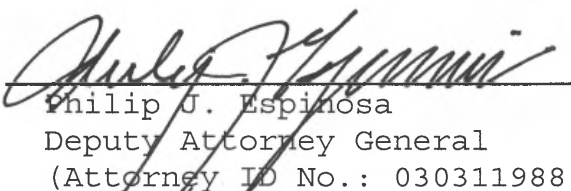
CONCLUSION

For the foregoing reasons, the DOT respectfully submits that, as a matter of law, the court should enter an order: (1) declaring that the Ordinances are null and void, and (2) permanently enjoining Leonia from the further enforcement of the Ordinances, including but not limited to the use of signage regarding the Ordinances, police officials notifying motorists about the Ordinances, and the issuance of traffic citations based on the Ordinances.

Respectfully submitted,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: _____


Philip J. Espinosa
Deputy Attorney General
(Attorney ID No.: 030311988)

Dated: July 11, 2018


CERTIFICATION OF SERVICE

I certify that on July 11, 2018, I filed the DOT's notice of motion for summary judgment and supporting papers on eCourts, and emailed a copy of said papers, to the following parties:

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GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: 
Philip J. Espinosa
Deputy Attorney General
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Dated: July 11, 2018

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - HUDSON COUNTY
DOCKET NO.: HUD-L-607-18

JACQUELINE ROSA,	:	
	:	
Plaintiff,	:	<u>Civil Action</u>
	:	
v.	:	
	:	
BOROUGH OF LEONIA, ET AL.,	:	
	:	
Defendants.	:	

STATE OF NEW JERSEY	:	
DEPARTMENT OF TRANSPORTATION,	:	
	:	
Plaintiff-Intervenor,	:	
	:	
v.	:	CERTIFICATION OF MARK A.
	:	HIESTAND
	:	
BOROUGH OF LEONIA, NEW	:	
JERSEY,	:	
	:	
Defendant.	:	

Mark A. Hiestand certifies unto law and says:

1. Since June 2001, I have been employed by the State of New Jersey Department of Transportation (DOT) as a traffic investigator and am currently the Supervisor of the Traffic Investigations and Regulations Unit, which operates within the Bureau of Traffic Engineering. Among other responsibilities, the Traffic Regulations Unit is responsible for reviewing and evaluating municipal traffic ordinances, pursuant to Title 39 of the New Jersey Statutes and the Manual on Uniform Traffic Control Devices (issued by the Federal Highway Administration of the United States Department of Transportation). As such, I am familiar with this matter.

2. I have prepared this certification in support of the DOT's motion for summary judgment in this case.

3. The Borough of Leonia (Leonia) has adopted traffic ordinances, Ordinance Nos. 2017-19, 2018-2 and 2018-5 (hereinafter collectively referred to as "the ordinances"). Copies of the ordinances are attached and referred to as DOT Exhibits B, C, and D respectively.

4. By the ordinances, which restrict traffic on most of Leonia's streets during certain hours unless a person (a) is a resident of a street needing access to the person's home or can demonstrate a documented need to access a residence on the

street or parts of streets as described, or (b) is traveling to and/or from a Leonia destination, Leonia has prohibited through traffic regarding the streets included within the ordinances. In other words, by the ordinances, Leonia has established "no through streets" regarding the streets included within the ordinances.

5. Leonia is located within close proximity to the George Washington Bridge and to several state and county highways, including but not limited to, the New Jersey Turnpike, and State Routes 4, 46 and 80.

6. In addition, a portion of State Route 93, also known as Grand Avenue, is located within the municipal boundaries of Leonia.

7. Leonia is also adjacent to several other municipalities within Bergen County, including Fort Lee, Englewood, Ridgefield Park, Palisades Park, and Teaneck.

8. A portion of Bergen County Route 56 III (3), also known as Degraw Avenue and Fort Lee Road, is located within Leonia.

9. Pursuant to N.J.S.A. 39:4-8(a), notwithstanding any other provision of N.J.S.A. 39:4-8 to the contrary, any

municipal ordinance which places any impact on a State highway requires the approval of the DOT Commissioner.

10. "Impact on a State highway" is defined by N.J.A.C. 16:27-2.1 to mean any traffic control device on a non-State highway that is proposed for installation or any traffic regulation applicable to a non-State highway: (1) at a State highway intersection; (2) within 500 feet of a State highway; or (3) at a distance greater than 500 feet from a State highway but has a resultant queue that extends within 500 feet or less from a State highway.

11. The ordinances have an impact on a State highway as defined by N.J.A.C. 16:27-2.1 because the ordinances (a) impact a State highway at State Route 93 at the following intersections: Oakdene Avenue, Moore Avenue, Ames Avenue, Sylvan Avenue, Highwood Avenue, Park Avenue, Christie Street, Maple Street, Prospect Street, Palisade Avenue, Hillside Avenue, Cottage Place, Harrison Street, Christie Heights Street, Vreeland Avenue, Van Orden Avenue, Overlook Avenue, Longview Avenue and Lakeview Avenue; and (b) impact traffic within 500 feet of State Route 93 because Leonia has installed signs on the aforementioned municipal streets adjacent to the state highway.

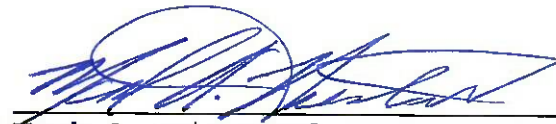
12. Leonia did not submit the ordinances to the DOT Commissioner for approval.

13. DOT traffic engineering staff, including myself, met with Leonia officials on April 4, 2018 to discuss potential traffic control options.

14. The DOT then proposed potential traffic control options for Leonia's consideration, as confirmed in the attached letter of May 8, 2018. (DOT Exhibit E.) Such potential traffic control options could require the consent of the DOT, the County of Bergen, and/or potentially adjacent municipalities, depending on which potential traffic control options Leonia would want to explore. Such a determination could be reached by the DOT following an investigation by the DOT, and the DOT's determination of whether the potential traffic control options would be in the interest of safety and the expedition of traffic on the public highways, pursuant to Title 39 and the Manual on Uniform Traffic Control Devices.

15. To my knowledge the DOT has received no requests from Leonia to act upon any of the potential options included in the DOT's letter of May 8, 2018.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Mark A. Hiestand
Supervisor, Traffic Investigations
Bureau of Traffic Engineering

Dated: July 11, 2018

DOT EXHIBIT A

Also, in 43 *Am. Jur. Public Officers* Section 461, it is said:

"Official duties involving the exercise of discretion and judgment for the public weal cannot be delegated. They can be performed only in person."

This rule has been followed in *State v. Howard*, 74A 392 (Sup. Ct. Vt. 1909) *State, Danforth, pros. v. Paterson*, 34 N. J. L. 163, (Sup. Ct. 1870) *Soderstrom v. Lynch, et al.* 9 N. E. 2nd, 372 (Sup. Jud. Ct. Mass. 1937) *Broderick v. City of New York* 67 N. E. 2nd 737, (N. Y. Ct. App. 1946).

While the Courts have experienced some difficulty in giving the terms "ministerial" and "discretionary" a practical working definition, *Note*, 26 *Mich. L. Rev.* 933 (1928), they have recently been defined with approval as follows:

"A ministerial act is one which a person or board performs upon a given state of facts, in a prescribed manner, in observance of the mandate of legal authority and without regard to or the exercise of his own judgment upon the propriety of the act being done."

"Discretion may be defined, when applied to public functionaries, as the power or right conferred upon them by law of acting officially under certain circumstances, according to the dictates of their own judgment and conscience, and not controlled by the judgment or conscience of others." *Independent School Dist. of Danbury v. Christiansen*, 49 N. W. 2nd 263 (Sup. Ct. Iowa 1951).

While it is manifest that the proper exercise of any delegated ministerial function involves some degree of discretion, where the legislative intent may be reasonably said to include the judgment and discretion of the public officer, there can be no delegation of the discretion so conferred. Cf. *Schwartz v. Camden*, 77 N. J. Eq. 135 (Ch. 1910). When it is considered that the claims made under Section 2A:37-32 N. J. S. may be repaid without limitation as to amount, No. 21 *Opinions of the Attorney General of New Jersey*, 1954, it is reasonable to say that the legislative intent included the judgment and discretion of the State Treasurer.

Accordingly, there being no statutory authority to delegate, the duty imposed upon the State Treasurer by Section 2A:37-32 N. J. S. to determine the validity of claims for repayment of money in his custody cannot be delegated.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General.

By: CHARLES J. KEHOE,
Assistant Deputy
Attorney General.

CJK:MG

MARCH 4, 1955.

HON. FREDERICK J. GASSERT, JR.,
Director, Division of Motor Vehicles,
State House,
Trenton, New Jersey.

FORMAL OPINION—1955. No. 5.

DEAR DIRECTOR GASSERT:

Your opinion has been requested (1) as to the power of a municipality, (the Borough of Demarest in this case) to pass an ordinance establishing "no through" streets on which all traffic will be prohibited other than that whose destination is to some point on that street, and (2) if such power exists, is such an ordinance subject to your approval.

N. J. S. A. 39:4 197 provides that:

"No municipality shall pass an ordinance or resolution on a matter covered by or which alters or in any way nullifies the provisions of this chapter (the Motor Vehicle and Traffic Act) or any supplement to this chapter; except that ordinances and resolutions may be passed regulating special conditions existing in the municipality on the subjects and within the limitations following:

(1) Ordinance

- Altering speed limitations as provided in section 39:4 98 of this Title;
- Limiting use of streets to certain class of vehicles;
- Designating one-way streets;
- Designating stops, stations or stands for omnibuses;
- Regulating the stopping or starting of street cars at special places, such as railroad stations, public squares or in front of certain public buildings;
- Regulating the passage or stopping of traffic at certain congested street corners or other designated points;
- Regulating the parking of vehicles on streets and portions thereof including angle parking as provided in section 39:4-135 of this Title;
- Regulating the parking of vehicles upon grounds, other than a street or highway, owned or leased and maintained by the municipality, or any school district board of education therein, including any lands devoted to the public parking of vehicles, the entrances thereto and exits therefrom.

(2) Ordinance or resolution

- Designating through streets as provided in article 17 of this chapter (39:4 140 et seq.);
- Designating and providing for the maintenance as 'no passing' zones of portions of highway where overtaking and passing or driving to the left of the roadway is deemed especially hazardous."

The power to designate "no through" streets is not among the powers granted to a municipality by this section, nor is such power granted by any other provision of our statutes. The power to designate main traveled or major highways within the municipality as a "through street," to be marked at the entrance thereto from intersecting streets by "stop" signs is given by N. J. S. A. 39:4 197 and 39:4 140, but an ordinance designating such through street cannot be effective until it is approved by you, this because N. J. S. A. 39:4 202 provides:

"No resolution, ordinance or regulation passed, enacted or established under authority of this article, shall be effective until submitted to and approved by the director as provided in section 39:4-8 of this Title."

There is no inherent power vested in a municipality by which it may legally restrict the right of the public to the free use of streets and roads. Any right of the municipality to pass ordinances and resolutions regarding the flow of traffic over its streets and highways can arise only by legislative grant; and there has been none.

Even where the subject matter of the ordinance is within the power granted by the statute, the regulation must bear a reasonable relationship to public safety; there cannot be arbitrary action. (See *Garneau v. Eggers*, 113 N. J. L. 245, 248, 249 (Sup. Ct. 1934); *Giant Tiger Corporation v. Trenton*, 11 N. J. Misc. 836, (Sup. Ct. 1933); *Pionick v. Newark*, 14 N. J. Super, 134 (Sup. Ct. 1951); and *Terminal Storage, Inc. v. Raritan Township*, 15 N. J. Super, 547 (Sup. Ct. 1951).

A recent New York case (*People v. Grant*, 306 N. Y. 258, 117 N. E. (2d) 542 (Ct. of App. N. Y. 1954)) is in accord with our conclusion.

OPINIONS

In the cited case, an ordinance of the Town of North Hempstead prohibited "through or transient vehicular traffic" on streets in or near the area of New Hyde Park, the ordinance being passed as a result of complaints from residents who objected to the volume of traffic at particular hours of the day, mainly because of the large number of automobiles driven by persons going to and from work at the Sperry Gyroscope Company plant situated just north of the area. In holding the ordinance invalid the Court said,

"Political subdivisions and municipal corporations hold * * * streets for the benefit of the public, consisting of the whole of the people, and regulation of the streets is the exercise of a governmental function in that they are subject exclusively to regulation and control by the state as a sovereign except to the extent that the Legislature delegates power over them to political subdivisions and municipal corporations."

It is our opinion that the "no through street" ordinance proposed by the Borough of Demarest, and similar ordinances proposed by other municipalities, have no legislative sanction.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General.

By: JAMES T. KIRK,
Deputy Attorney General.

JTK/LL

MARCH 4, 1955.

HONORABLE WILLIAM F. KELLY, JR.,
President, Civil Service Commission,
State House,
Trenton 7, New Jersey.

FORMAL OPINION 1955. No. 6.

DEAR PRESIDENT KELLY:

You have recently requested advice concerning the power of a municipal governing body to set minimum and maximum age limits for Patrolmen and Firemen. Your memorandum states that the City of Union City adopted two ordinances in 1925 the effect of which is to establish the minimum age at 21 and the maximum age at 30 for Patrolmen and Firemen. These age limits coincide with those set by R. S. 40:47-4, as amended. However, prior to its amendment, approved April 24, 1945, the statute provided for a thirty-five year maximum age.

N. J. S. A. 38:23A-2, enacted in 1944, provides as follows.

"When the qualifications for any examination or test for, or appointment or election to any office, position or employment under the government of this State, or of any county, municipality, school district or other political subdivision of this State, or under any board, body, agency or commission of this State, or of any county, municipality or school district, includes a maximum age limit, any person, who, heretofore and subsequent to July first, one thousand nine hundred and forty, entered or hereafter, in time of war, shall enter the active military or naval service of the United States or the active service of the Women's Army Corps, the Women's Reserve of the Naval Reserve or any similar organization authorized by the United

ATTORNEY GENERAL

States to serve with the Army or Navy, shall be deemed to meet such maximum age requirement, if his actual age, less the period of such service, would meet the maximum age requirement in effect on the date the person entered into such service of the United States."

The public announcements issued by your Department for examinations for Patrolmen and Firemen contain the following provision with respect to age.

"Not less than 21 nor more than 30 years of age at the announced closing date for filing applications for these examinations, except that for veterans who entered active service with the armed forces after July 1, 1940 and prior to April 24, 1945, the maximum age limit is 35 years.

We are of the opinion that the age limits set by the municipal ordinance are valid and must be regarded as controlling. The governing body of each municipality is empowered by R. S. 40:47-1 to make ordinances for the establishment and regulation of a police force. R. S. 40:47-3, as amended, and R. S. 40:47-4 set up restrictions within which the municipalities must operate in the appointment of police officers. We see no reason, however, why a municipality may not make more stringent regulations so long as they comply as well with the statutory prohibitions on the subject. In 62 C. J. S., Municipal Corporations, p. 1094 it is stated,

"The appointment of police officers is generally regulated by statute setting up rules of eligibility of prospective appointees; and the municipality may prescribe requirements in addition to, although not in contravention of, those prescribed by statute."

Your announcement is correct as to municipalities which have not set any age limits and as to those in which the age limits were set at 21 years of age to 35 years of age prior to April 24, 1945. However, with respect to Union City and other municipalities with similar ordinances where the age limit was or is more restrictive than that in effect by state law, the more restrictive provisions of the municipal ordinance are controlling. Thus veteran applicants for police and fire positions in Union City must be no older at the time of appointment than 30 years of age, plus a period of time, computed in accordance with the terms of the statute. Even though prior to April 24, 1945 the statutory maximum age was 35, the age of 30 set by the ordinance was "the maximum age requirement in effect" within the meaning of N. J. S. A. 38:23A-2, *supra*.

One other aspect of your announcement requires attention. The statute R. S. 40:47-4, as amended, provides,

"No person shall be appointed a member of the paid fire or police department or force of any municipality who is less than twenty-one or more than thirty years of age * * *."

The critical time is the time of appointment. At that time the appointee must be above the minimum and below the maximum. See *Hutchell v. Sierckman*, 8 N. J. Misc. 503 (Sup. Ct. 1930). Your announcement makes the announced closing date the critical time. In this respect it is incorrect. Language should be substituted to make it clear that at the time of appointment the applicant must be within the prescribed age limits.

Yours very truly,

GROVER C. RICHMAN, JR.,

Attorney General

By: JOHN F. CRANE,

Deputy Attorney General

JFC:b.

DOT EXHIBIT B

**ORDINANCE NO. 2017-19
BOROUGH OF LEONIA
COUNTY OF BERGEN**

**AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 194
"VEHICLES AND TRAFFIC" OF THE CODE OF THE BOROUGH OF LEONIA
BY ADDING TO ARTICLE XI "TEMPORARY CLOSING OF STREETS"
§194-25.1 "CLOSING OF CERTAIN STREETS" AND
ARTICLE XIV BY THE ADDITION THEREOF
OF SCHEDULE XVIII "STREETS CLOSED TO TRAFFIC"**

WHEREAS, the Mayor and Council of the Borough of Leonia have determined that it is in the best interests of the Borough of Leonia to revise Chapter 194 of the Borough of Leonia Ordinance concerning Vehicles and Traffic; and

Section 1.

WHEREAS, the Mayor and Council of the Borough of Leonia desire to amend and supplement §194 "Vehicles and Traffic" of the Code of the Borough of Leonia by adding to Article XI "Temporary Closing of Streets" §194-25.1 "Closing of Certain Streets":

§194-25.1 Closing of Certain Streets.

No person shall operate a vehicle on those streets or parts of streets as described in Schedule XVIII (§194-49) attached to and made a part of this Chapter during the times of the days indicated in said Schedule unless that person is a resident of the said street needing access to his home or can demonstrate or document a need to access a residence on the street or parts of streets as described.

Article XVIII. Streets Closed to Traffic.

§194-49. Schedule XVIII Streets Closed to Traffic.

In accordance with the provisions of §194-25.1, the following streets or parts of streets shall be closed to traffic between the hours listed on the days indicated:

Between 6:00 to 10:00 a.m. and 4:00 to 9:00 p.m., the following streets will have the restrictions listed below:

<u>Road Name/Direction of Road</u>	<u>Prohibited Entry</u>
Edgewood Road- Southbound from Ridgeland Ter. to Ridgeland Terrace	Do Not Enter
<u>Broad Avenue – Eastbound from Broad Avenue</u>	
Vreeland Avenue	Do Not Enter
Woodland Place	Do Not Enter

Beechwood Place	Do Not Enter
Magnolia Place	Do Not Enter
Elm Place	Do Not Enter
Allaire Avenue	Do Not Enter
Westview Avenue	Do Not Enter
Summit Avenue	Do Not Enter
Park Avenue	Do Not Enter
Highway Avenue	Do Not Enter
Sylvan Avenue	Do Not Enter
Moore Avenue	Do Not Enter
Oakdene Avenue	Do Not Enter

Broad Avenue – Westbound of Broad Avenue

Oakdene Avenue	Do Not Enter
Moore Avenue	Do Not Enter
Ames Avenue	Do Not Enter
Sylvan Avenue	Do Not Enter
Highwood Avenue	Do Not Enter
Park Avenue	Do Not Enter
Christie Street	Do Not Enter
High Street	Do Not Enter
Crescent Avenue	Do Not Enter
Harrison Street	Do Not Enter
Overlook Avenue	Do Not Enter
Van Orden Avenue	Do Not Enter
Vreeland Avenue	Do Not Enter
Christie Heights Street	Do Not Enter
Harrison Street	Do Not Enter

Fort Lee Road – Southbound of Fort Lee Road

Leonia Avenue	Do Not Enter
Gladwin Avenue	Do Not Enter
Oaktree Place	Do Not Enter
Paulin Boulevard	Do Not Enter
Irving Street	Do Not Enter

Fort Lee Road – Northbound of Fort Lee Road

Linden Terrace	Do Not Enter
Hawthorne Terrace	Do Not Enter
Leonia Avenue	Do Not Enter

Grand Avenue – Eastbound of Grand Avenue

Lakeview Avenue	Do Not Enter
Longview Avenue	Do Not Enter
Overlook Avenue	Do Not Enter
Van Orden Avenue	Do Not Enter

Vreeland Avenue	Do Not Enter
Harrison Street	Do Not Enter
Cottage Place	Do Not Enter
Hillside Avenue	Do Not Enter
Palisade Avenue	Do Not Enter
Prospect Street	Do Not Enter
Maple Street	Do Not Enter
Christie Street	Do Not Enter
Park Avenue	Do Not Enter
Highwood Avenue	Do Not Enter
Sylvan Avenue	Do Not Enter
Ames Avenue	Do Not Enter
Oakdene Avenue	Do Not Enter

Grand Avenue – Westbound of Grand Avenue

Maple Street	Do Not Enter
Schor Avenue	Do Not Enter

Bergen Boulevard – Westbound of Bergen Boulevard

Christie Lane	Do Not Enter
Hazlitt Avenue	Do Not Enter
Washington Terrace	Do Not Enter
Lester Street	Do Not Enter

Glenwood Avenue – Northbound of Oakdene Avenue

Glenwood Avenue	Do Not Enter
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Glenwood Avenue – Eastbound of Glenwood Avenue

Hillside Avenue	Do Not Enter
Woodland Place	Do Not Enter
	Do Not Enter

Allaire Avenue
Summit Avenue
Park Avenue
Highwood Avenue
Oakdene Avenue

Do Not Enter
Do Not Enter
Do Not Enter
Do Not Enter
Do Not Enter

Intersections with Traffic Control Devices

Broad Ave/Hillside Ave: West and Eastbound from Broad Ave	No Right and Left Turn
FLR EB/Glenwood Avenue: North and Southbound from FLR	No Right and Left Turn
FLR EB/Station Parkway: Southbound from FLR	No Right Turn
Grand Avenue/Christie Heights: Eastbound from Grand Avenue	No Right and Left Turn
Grand Avenue/Moore Avenue: Eastbound from Grand Avenue	No Right and Left Turn

Section 2.

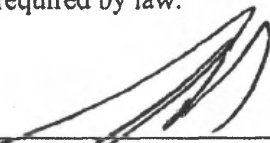
All other provisions of Chapter 194 "Vehicles and Traffic" of the Code of the Borough of Leonia are hereby ratified and confirmed.

Section 3. Severability.

If any article, section, sub-section, sentence, clause, or phrase of this Ordinance is for any reason deemed to be unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

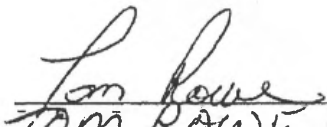
Section 4. Effect.

This Ordinance will take effect upon publication as required by law.



Judah Zeigler, Mayor

ATTEST:



Tom Rowe
Borough Clerk

7/21/18

DOT EXHIBIT C

**BOROUGH OF LEONIA
COUNTY OF BERGEN**

2018-2
**AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 194
"VEHICLES AND TRAFFIC" OF THE CODE OF THE BOROUGH OF LEONIA
BY ADDING §194-25.2 "VIOLATIONS AND PENALTIES"**

**BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE BOROUGH OF
LEONIA** as follows:

WHEREAS, the Mayor and Council of the Borough of Leonia adopted §194-25.1
"Closing of Certain Streets" on December 4, 2017; and

WHEREAS, the Mayor and Council have determined to establish a separate penalty
specifically for the violation of §194-25.1.

NOW THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of
Leonia, as follows:

Section 1.

Chapter 194 "Vehicles and Traffic" of the Code of the Borough of Leonia, Article XI
"Temporary Closing of Streets" is hereby amended and supplemented by adding §194-25.2
"Violations and Penalties", as follows:

§194-25.2 Violations and Penalties.

Every person convicted of a violation under §194-25.1 or any supplement thereto shall be
liable to a penalty of \$200.00 or imprisonment for a term of not exceeding 15 days, or both. No
points will be assessed for a violation of this section in accordance with the motor vehicle point
system of the New Jersey Motor Vehicle Commission.

Section 2. Repealer.

All other ordinances of the Borough, or parts thereof, which are in conflict with
this ordinance are hereby repealed to the extent of such conflict.

Section 3.

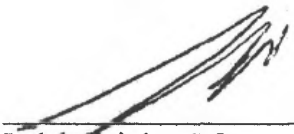
All other provisions of Chapter 194 "Vehicles and Traffic" of the Code of the Borough of
Leonia are hereby ratified and confirmed.

Section 4. Severability.

If any article, section, sub-section, sentence, clause, or phrase of this Ordinance is for any reason deemed to be unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

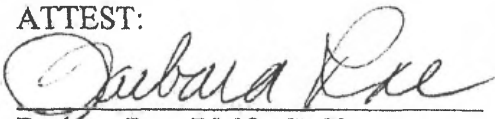
Section 5. Effect.

This Ordinance will take effect upon publication as required by law.



Judah Zeigler, Mayor

ATTEST:



Barbara Rae, RMC, CMC
Borough Clerk

Introduced: 1/3/18
Adopted: 1/17/18
Approved: 1/17/18

DOT EXHIBIT D

**ORDINANCE NO. 2018-5
BOROUGH OF LEONIA
COUNTY OF BERGEN**

**AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 194
"VEHICLES AND TRAFFIC" OF THE CODE OF THE BOROUGH OF LEONIA
BY AMENDING ORDINANCE 2017-19, ARTICLE XI "TEMPORARY
CLOSING OF STREETS" §194-25.1 "CLOSING OF CERTAIN STREETS"
AND §194-49 SCHEDULE XVIII**

WHEREAS, the Mayor and Council of the Borough of Leonia adopted Ordinance No. 2017-19 on December 4, 2017; and

WHEREAS, the Mayor and Council have reviewed the impact of the Ordinance and have determined to revise same to provide for access to certain streets for those individuals traveling to Leonia destinations.

NOW THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Leonia, as follows:

Section 1.

§194-25.1 "Closing of Certain Streets" is amended in its entirety as follows:

§194-25.1 Closing of Certain Streets.

No person shall operate a vehicle on those streets or parts of streets as described in Schedule XVIII (§194-49) attached to and made part of Chapter 194 during the times of the days indicated in said Schedule unless that person

- (a) Is a resident of said street needing access to his home or can demonstrate a documented need to access a residence on the street or parts of streets as described; or
- (b) Is traveling to and/or from a Leonia destination.

Article XVIII. Streets Closed to Traffic.

§194-49. Schedule XVIII Streets Closed to Traffic.

In accordance with the provisions of §194-25.1, the following streets or parts of streets shall be closed to traffic between the hours listed on the days indicated:

Between 6:00 to 10:00 a.m. and 4:00 to 9:00 p.m., the following streets will be closed:

Lakeview Avenue	West to East – Eastview to Broad Avenue
Palmer Place	North to South – Highwood Avenue to Oakdene Avenue
Irving Street	North to South – Fort Lee Road to Christie Lane
Chestnut Street	East to West – Irving Street to Fort Lee Road
Edgewood Road	South to North – Ridgeland Terrace to Ridgeland Terrace

Between 6:00 to 10:00 a.m. and 4:00 to 9:00 p.m., the following streets will have the restrictions listed below:

Road Name/Direction of Road

Prohibited Entry

Broad Avenue – Eastbound from Broad Avenue

Vreeland Avenue	Do Not Enter
Woodland Place	Do Not Enter
Beechwood Place	Do Not Enter
Magnolia Place	Do Not Enter
Elm Place	Do Not Enter
Allaire Avenue	Do Not Enter
Westview Avenue	Do Not Enter
Summit Avenue	Do Not Enter
Park Avenue	Do Not Enter
Highwood Avenue	Do Not Enter
Sylvan Avenue	Do Not Enter
Moore Avenue	Do Not Enter
Oakdene Avenue	Do Not Enter

Broad Avenue – Westbound of Broad Avenue

Oakdene Avenue	Do Not Enter
Moore Avenue	Do Not Enter
Ames Avenue	Do Not Enter
Sylvan Avenue	Do Not Enter
Highwood Avenue	Do Not Enter
Park Avenue	Do Not Enter
Christie Street	Do Not Enter
High Street	Do Not Enter
Crescent Avenue	Do Not Enter
Overlook Avenue	Do Not Enter
Van Orden Avenue	Do Not Enter

Vreeland Avenue
Christie Heights Street
Harrison Street

Do Not Enter
Do Not Enter
Do Not Enter

Fort Lee Road – Southbound of Fort Lee Road

Leonia Avenue
Gladwin Avenue
Oaktree Place
Paulin Boulevard
Irving Street

Do Not Enter
Do Not Enter
Do Not Enter
Do Not Enter
Do Not Enter

Fort Lee Road – Northbound of Fort Lee Road

Linden Terrace
Hawthorne Terrace
Leonia Avenue

Do Not Enter
Do Not Enter
Do Not Enter

Grand Avenue – Eastbound of Grand Avenue

Lakeview Avenue
Longview Avenue
Overlook Avenue
Van Orden Avenue
Vreeland Avenue
Harrison Street
Cottage Place
Hillside Avenue
Palisade Avenue
Prospect Street
Maple Street
Christie Street
Park Avenue
Highwood Avenue
Sylvan Avenue
Ames Avenue
Oakdene Avenue

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Grand Avenue – Westbound of Grand Avenue

Maple Street
Schor Avenue

Do Not Enter
Do Not Enter

Bergen Boulevard – Westbound of Bergen Boulevard

Christie Lane

Do Not Enter

Hazlitt Avenue
Washington Terrace
Lester Street

Do Not Enter
Do Not Enter
Do Not Enter

Glenwood Avenue – Northbound of Oakdene Avenue

Glenwood Avenue

Do Not Enter

Glenwood Avenue – Eastbound of Glenwood Avenue

Hillside Avenue
Woodland Place
Allaire Avenue
Summit Avenue
Park Avenue
Highwood Avenue
Oakdene Avenue

Do Not Enter
Do Not Enter
Do Not Enter
Do Not Enter
Do Not Enter
Do Not Enter
Do Not Enter

Intersections with Traffic Control Devices

Broad Ave/Hillside Ave: **West and Eastbound from Broad Ave**
FLR EB/Glenwood Avenue: **North and Southbound from FLR**
FLR EB/Station Parkway: **Southbound from FLR**
Grand Avenue/Christie Heights: **Eastbound from Grand Avenue**
Grand Avenue/Moore Avenue: **Eastbound from Grand Avenue**

No Right and Left Turn
No Right and Left Turn
No Right Turn
No Right and Left Turn
No Right and Left Turn

Section 2.

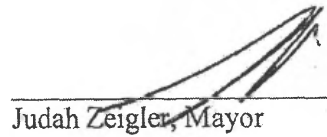
All other provisions of Chapter 194 "Vehicles and Traffic" of the Code of the Borough of Leonia are hereby ratified and confirmed.

Section 3. Severability.

If any article, section, sub-section, sentence, clause, or phrase of this Ordinance is for any reason deemed to be unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

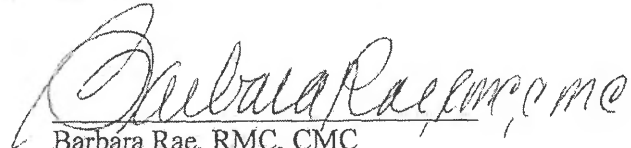
Section 4. Effect.

This Ordinance will take effect upon publication as required by law.



Judah Zeigler, Mayor

ATTEST:



Barbara Rae, RMC, CMC
Borough Clerk

DOT EXHIBIT E



State of New Jersey

DEPARTMENT OF TRANSPORTATION

P.O. Box 600

Trenton, New Jersey 08625-0600

PHILIP D. MURPHY
Governor

DIANE GUTIERREZ-SCACCETTI
Acting Commissioner

SHEILA Y. OLIVER
Lt. Governor

May 8, 2018

The Honorable Judah Zeigler
Mayor, Borough of Leonia
Borough Hall
312 Broad Ave
Leonia, NJ 07605

Dear Mayor Zeigler,

I am following up on the April 4, 2018 meeting between Leonia officials and NJDOT staff to address the traffic issues affecting Leonia Borough. As you know, traffic safety is one of NJDOT's top priorities. Commissioner Gutierrez-Scaccetti wants to work with municipalities throughout the state by offering the resources of the Department to ensure that our motorists and our residents are kept safe.

At the meeting with your staff, we discussed techniques the town can legally employ to control commuter traffic through Leonia during peak traffic hours. NJDOT's recommendations included:

1. AM and PM peak hour turn prohibitions onto Fort Lee Road eastbound (toward the GW Bridge/Turnpike) from all intersecting side streets.
2. Advance signing on other streets leading to Fort Lee Road warning of the turn prohibitions.
3. Changing some streets that intersect Fort Lee Road to one-way to help minimize the number of officers stationed at the Fort Lee Road intersections.
4. Removal of all other "resident only" signing including those on Route NJ 93 traffic signal mast arms.
5. Part-time (peak hour) turn prohibitions from Route NJ 93 onto certain municipal streets (Subject to an investigation by the Bureau of Traffic Engineering).

We appreciated the opportunity to sit with your staff to work on an amenable outcome that promotes the safety of Leonia residents while ensuring the ease of passage for motorists in one of the state's most highly trafficked regions. Please let us know if you need further details on any of these recommendations or if you have any questions. I can be contacted at 609-530-2600. We look forward to hearing from you and continuing to provide Leonia assistance to address these issues.

Sincerely,

A handwritten signature in cursive script that reads "Jaime Marie Oplinger".

Jaime Marie Oplinger, P.E.
Executive Manager, Bureau of Traffic Engineering

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DOT EXHIBIT F



PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
PO Box 114
TRENTON, NJ 08625-0114

GURBIR S. GREWAL
Attorney General

March 16, 2018

Via Email and Regular Mail

Brian Chewkaskie, Esq.
Gittleman, Mulstock & Chewcaskie, LLP
Counsel for the Borough of Leonia
2200 Fletcher Avenue, Fifth Floor
Fort Lee, NJ 07024

Re: Borough of Leonia Ordinance ORD-2018-5:
Amending Ordinance 2017-19 - Section 194-25.1
Closing of Streets; Borough of Leonia Ordinance
2017-19

Dear Mr. Chewkaskie:

I write to follow up on our recent conversation and reiterate that the above referenced ordinances recently passed by your client, the Borough of Leonia ("Leonia"), restricting certain traffic from streets within the Borough are legally invalid and the Borough should immediately refrain from enforcing them.

Pursuant to N.J.S.A. 39:4-8(a), with limited exceptions that are not applicable here, the New Jersey Commissioner of Transportation (the "Commissioner") must approve any municipal ordinance, resolution or regulation concerning, regulating or governing traffic or traffic conditions. Moreover, the Commissioner is not required to approve any such ordinance, resolution, or regulation, unless, "after investigation by the



March 16, 2018

Page 2

Commissioner, the same shall appear to be in the interest of safety and the expedition of traffic on the public highways." Additionally, "Where the Commissioner's approval is required, a certified copy of the adopted ordinance, resolution, or regulation shall be transmitted by the clerk of the municipality or county, as applicable, to the Commissioner within 30 days of adoption, together with: a copy of the municipal or county engineer's certification, a statement of the reasons for the municipal or county engineer's decision, detailed information as to the location of streets, intersections, and signs affected by the ordinance, resolution, or regulation, and traffic count, crash, and speed sampling data, when appropriate."

Furthermore, in Formal Opinion No. 5, issued in 1955, the Attorney General addressed a question concerning the power of municipalities to designate "no through" streets that prohibited traffic other than those motorists whose destination was on the closed street. After analyzing the standards established in Title 39, the Attorney General concluded that "There is no inherent power vested in a municipality by which it may legally restrict the right of the public to the free use of streets and roads. Any right of the municipality to pass ordinances and resolutions regarding the flow of traffic over its streets and highways can arise only by legislative grant; and there has been none."

Leonia's ordinances have not been presented to Transportation Commissioner as required for her to make any determination under applicable law. Thus, for the reasons discussed above, Leonia lacked the authority to enforce the ordinances that restrict traffic on its roadways without authority from the Legislature or approval from the Commissioner pursuant to N.J.S.A. 39:4-8(a). We therefore direct that you advise the Borough to immediately refrain from enforcing the above referenced ordinances or the Attorney General will be required to take appropriate action to enforce the law.

We encourage Leonia officials to meet with the New Jersey Department of Transportation (DOT) to discuss a lawful resolution of whatever traffic problems may exist in Leonia as the result of commuters traveling through Leonia to use the George Washington Bridge.

March 16, 2018

Page 3

The Attorney General's office is willing to facilitate and participate the meeting. Please contact me to advise whether Leonia is willing to participate in such a meeting.

Respectfully yours,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: 

Kevin R. Jespersen
Chief Counsel to the Attorney General

EXHIBIT T

SEIGEL LAW FIRM LLC
Jacqueline Rosa – 009372010
505 Goffle Road
Ridgewood, NJ 07450
(201) 444-4000

JACQUELINE ROSA,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY

Plaintiff,

DOCKET NO. HUD-L-0607-18

v.

BOROUGH OF LEONIA, et al,

Defendants.

**NOTICE OF MOTION FOR
SUMMARY JUDGMENT AND
PUNITIVE DAMAGES**

STATE OF NEW JERSEY DEPARTMENT
OF TRANSPORTATION

v.

BOROUGH OF LEONIA, et al.

Defendants.

JACQUELINE ROSA,

To: Brian M. Chewcaskie, Esq.
Gittleman, Muhlstock & Chewcaskie
2200 Fletcher Avenue
Fort Lee, NJ 07024
Attorneys for

Office of The Attorney General
RJ Hughes Justice Complex
25 Market Street, Box 080
Trenton, NJ 08625-0080

PLEASE TAKE NOTICE that Seigel Law LLC, by Jacqueline Rosa, Esq., pro se attorney for the Plaintiff, Jacqueline Rosa will apply to the Superior Court of New Jersey, Hudson County, at the Courthouse in Jersey City, New Jersey on Friday, August 17, 2018 at 9:00 o'clock in the

forenoon or as soon thereafter as counsel can be heard for an Order granting that Leonia Ordinances, 2017-19 and 2018-5 are declared null and void and that all signage pertaining to the road restrictions be taken down.

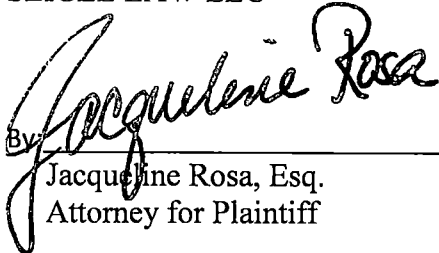
Oral argument is hereby waived unless opposition is filed, and the within Notice of Motion is being submitted pursuant to Rule 1:6-2. Plaintiff will rely upon the certification of counsel and a Brief annexed hereto in support of the within Motion.

Current Discovery End Date May 24, 2019.

There is currently no Arbitration or Trial date scheduled in this matter.

A proposed form of Order is attached hereto.

SEIGEL LAW LLC

By 
Jacqueline Rosa, Esq.
Attorney for Plaintiff

Dated: July 16, 2018

Jacqueline Rosa, Esq.
Attorney for Plaintiff

SEIGEL LAW FIRM LLC
Jacqueline Rosa – 009372010
505 Goffle Road
Ridgewood, NJ 07450
(201) 444-4000

JACQUELINE ROSA,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY

Plaintiff,

DOCKET NO. HUD-L-0607-18

v.

BOROUGH OF LEONIA, et al,

Defendants.

**ORDER GRANTING SUMMARY
JUDGMENT AND PUNITIVE
DAMAGES**

STATE OF NEW JERSEY DEPARTMENT
OF TRANSPORTATION

v.

BOROUGH OF LEONIA, et al.

Defendants.

JACQUELINE ROSA,

THIS MATTER coming before the Court on an Order to Show Cause by Jacqueline Rosa,
Esq., pro se attorney, and good and sufficient cause having been shown;

It is on this _____ day of May, 2018,

ORDERED that Leonia Ordinances, 2017-19, 2018-2, and 2018-5 are declared null and void,

ORDERED that all signage pertaining to the road restrictions be taken down,

ORDERED that notice be given to the public that Leonia streets are again available for all
public use,

ORDERED that punitive damages in the amount of _____ are awarded to Plaintiff,
Jacqueline Rosa.

ORDERED that a copy of this Order be served upon all counsel within seven (7) days of receipt by plaintiff's counsel.

Honorable Peter F. Bariso, J.S.C.

SEIGEL LAW FIRM LLC
Jacqueline Rosa – 009372010
505 Goffle Road
Ridgewood, NJ 07450
(201) 444-4000

JACQUELINE ROSA,

Plaintiff,

v.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY

DOCKET NO. HUD-L-0750-18

BOROUGH OF LEONIA, et al,

Defendants.

Civil Action

STATE OF NEW JERSEY DEPARTMENT
OF TRANSPORTATION

**CERTIFICATION OF COUNSEL
FOR SUMMARY JUDGMENT AND
DAMAGES**

v.

BOROUGH OF LEONIA, et al.

Defendants.

I, JACQUELINE ROSA, do hereby certify as follows:

1. I am an attorney at law duly licensed to practice before the Courts of this State. I bring this action as a pro se Plaintiff, and as such, I am fully familiar with all the facts and circumstances of this action. I make this certification in support of the within Motion.
2. In supporting said action, the Undersigned relies on the Statement of Material Facts and the Undersigned's Brief.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

SEIGEL LAW LLC

BY:

Jacqueline Rosa, Esq.

DATE: July 16, 2018

SEIGEL LAW FIRM LLC
Jacqueline Rosa – 009372010
505 Goffle Road
Ridgewood, NJ 07450
(201) 444-4000

JACQUELINE ROSA,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY

Plaintiff,

DOCKET NO. HUD-0607-18

v.

BOROUGH OF LEONIA, et al,

Defendants.

Civil Action

STATE OF NEW JERSEY DEPARTMENT
OF TRANSPORTATION

v.

BOROUGH OF LEONIA, et al.

Defendants.

**BRIEF IN SUPPORT OF PLAINTIFFS' ORDER TO SHOW CAUSE FOR A
PRELIMINARY INJUNCTION WITH TEMPORARY RELIEF**

By: Jacqueline Rosa, Esq.

July 16, 2018

PRELIMINARY STATEMENT

This matter arises out of a lawsuit that was filed on January 30, 2018 against the Borough of Leonia and other defendants, for illegally closing some sixty (60) residential streets in their municipality to non-residents, and traffic with non-Leonia business.

Among other things, the complaint alleges that Ordinances §194-25.1 and §194-25.2 enacted by the Borough of Leonia, violate Plaintiff's right to freedom of travel and are facially and presumptively invalid, as well as arbitrary, capricious, and unreasonable.

Defendants have been in violation of Plaintiff's Civil rights since the enactment of the Ordinance in January 2018.

STATEMENT OF UNDISPUTED MATERIAL FACTS

Plaintiff will agree with, and rely on the statement of facts as laid out in the State of New Jersey's brief.

POINT 1 **SUMMARY JUDGMENT IS APPROPRIATE**

In the within matter, Summary Judgment is appropriate to declare Leonia's Ordinance invalid. Defendants have violated several New Jersey State laws. N.J.S.A 39:4-8 states that any ordinance, resolution, or regulation which places any impact on a State roadway shall require the approval of the commissioner. The Ordinance clearly affects State roadways. The only remaining roads in Leonia that the Plaintiff can use during the restricted hours, are county roads and State Highways. Due to the traffic being restricted on over 60 side streets, plaintiff is forced to only use State operated roads to travel through Leonia. Plaintiff should not be forced to select only county roads or State highways to travel on. Additionally, all public travelers must face the same limited

options during the restricted hours which leads to more traffic and dangerous conditions on the remaining routes. As admitted by Defense counsel, the defendants did not seek approval from the Commissioner and have unsuccessfully attempted to do so within the last month. Further, N.J.S.A 39:4-8 states that a municipality that is enacting the ordinance, must provide appropriate notice to the adjoining municipality or county before enacting such ordinance. None of the surrounding towns or counties were alerted to these road closures before they took place.

N.J.S.A 39:4-94.2 specifically states that anyone who drives a vehicle over or upon the closed section of the highway, road or street which he knows or should have reason to know has been closed to traffic shall be subject to a fine of no more than \$100.00. The Borough has unilaterally decided on a fee they can charge to motorists which is in direct violation of state law.

Defendants' have clearly stretched the intended point of the State Legislature to fit their agenda. They simply failed to get any approval from the Commissioner, have no legal authority under Title 39, and the Ordinance clearly creates an impact on the surrounding highways.

Summary judgment is appropriate as to all Plaintiff's. Rule 4:46-2(c) directs that summary judgment be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." Essentially, the court must determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Liberty Surplus Ins. Corp. v. Nowell Amoroso, P.A., 189 N.J. 436, 445-46 (2007) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 536 (1995)). The trial judge's function is not to determine the truth of the matter, but to determine whether there

is a genuine issue of material fact at issue for trial. Brill at 56. Thus, facts raised by a non-moving party of any unsubstantial nature cannot defeat a motion for summary judgment and under proper circumstances, trial courts should be encouraged to grant summary judgment. Brill at 50.

In light of Brill, the right of summary judgment is even more substantial for it not only affords protection against groundless claims and frivolous defenses, saving the antagonists the time and expense of protracted litigation, but it also reserves judicial manpower and facilities to cases which meritoriously command attention. State v South Amboy Trust Co., 46 N.J. Super 497, 507 (Law Div. 1957.)

State v South Amboy Trust Co., 46 N.J. Super 497, 507 (Law Div. 1957.)

Thus, the purpose of the summary judgment procedure is "designed to cut through sham and frivolity in a [complaint or] answer and lay the case before the trial court in its true light." Monmouth Lumber v. Indemnity Ins. Co., 21 N.J. 439, 448 (1956.) it has been said that the "summary judgment procedure pierces the allegations of the pleadings to show that the facts are otherwise than as alleged." Judson v. People's Bank & Trust Co. of Westfield, 17 N.J. 67, 75 (1954); Eisen v. Kostkos, 116 N.J. Super.358, 371 (App. Div. 1971.)

Here, applying the Brill standard, Plaintiffs are entitled to summary judgment as a matter of law. There is no dispute as to the intended purpose of Defendant's Ordinance. There are no additional facts that would change any decision by the Court. Plaintiffs are entitled to Summary Judgment and an Order must be entered declaring the Defendants' Ordinance null and void.

POINT II

PLAINTIFF, JACQUELINE ROSA, IS ENTITLED TO DAMAGES FOR

CONSTITUTIONAL VIOLATIONS UNDER U.S. CODE §1983

Defendants are in violation of U.S. Code §1983, which guarantees Plaintiff her civil rights under the law. The law states, “every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.” Defendants are violating Plaintiff’s Constitutional right by arbitrarily denying Plaintiff her liberty to travel freely on all roads and from state to state.

In the case of United States v. Guest, certain individuals were indicted for conspiring to deprive citizens of their basic Constitutional rights, including the right to freely engage in interstate travel, and the right to equal enjoyment of privately owned places of public accommodation. U.S. v. Guest, 383 US 745. Here, the Defendants have deprived Plaintiff Rosa for over 8 months of one of her basic rights guaranteed by the Constitution. There is no doubt that by restricting access to public roads, the Plaintiff cannot travel freely and has therefore been stripped of her right to freely engage in travel. **“The constitutional right to travel from one State to another, and necessarily to use the highways and other instrumentalities of interstate commerce in doing so, occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized. Id. at 757. The Court further stated, “For all the great purposes for which the Federal government was formed, we are one people, with one common country. We are all citizens of the United States; and, as members of the same**

community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States." Id. at 758, citing, Crandall v. Nevada, 6 Wall. 35. ... "Freedom to travel throughout the United States has long been recognized as a basic right under the Constitution. See Twining v. New Jersey, 211 U. S. 78, 211 U. S. 97. It is clear that Defendants are violating Plaintiff's Constitutional rights and therefore Plaintiff is entitled to damages.

The purpose of punitive damages is deterrence and retribution; they punish a defendant's unlawful conduct and deter its repetition. State Farm Mutual Automobile Insurance Company, 538 U.S. at 416. Clearly in this matter, the defendants knew their conduct was unlawful as evidenced by the Attorney General sending out an opinion stating their Ordinance was "legally invalid." Even after that, defendants still refused to take down their signs and retract their Ordinance. The defendant willfully ignored the law and chose to violate Plaintiff's Constitutional rights. Further, it is necessary to award Plaintiff damages to deter other municipalities from attempting to enact the same laws. After Leonia put up their signs, the town of Weehawken attempted to do the same on a smaller scale. The Court must award damages to Plaintiff to deter other towns from enacting the exact same Ordinance as Leonia and then just waiting until it is challenged in Court. If this Court simply allows Leonia to take down their signs without any financial consequences, other towns will see no reason not to attempt the same ban.

In Smith v. Wade, the Supreme Court held that Section 1983 authorizes the award of punitive damages against state or local officials in their individual capacity. Smith v. Wade, 461 U.S. 30 (1983). The Court suggested that punitive damages may be awarded when an official's conduct is malicious, intentional, or recklessly or callously indifferent to protected rights. This test focuses on the state of mind of the defendant. Kolstad v. American Dental Association, 527 U.S. 526, 535-36 (1999). While outrageous or egregious conduct may provide evidence of the requisite

state of mind, the conduct need not be egregious or outrageous to justify an award of punitive damages. "Actual malicious intent should be the standard for punitive damages because the deterrent purposes of such damages would be served only if the threshold for those damages is higher in every case than the underlying standard for liability in the first instance." See, Smith. The determination of whether to award punitive damages once a showing of malicious or recklessly indifferent conduct is made rests within the discretion of the jury or judge. Fairley v. Jones, 824 F.2d 440 (5th Cir. 1987).

Finally, punitive damages may be awarded even when the plaintiff suffers only nominal damages from a deprivation of federal rights. Alexander v. Riga, 208 F.3d 419, 430-31 (3d Cir. 2000). "When execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983. Monell v. New York City Dept. of Social Services, 436 U. S. 658 (1978). Plaintiff is entitled to punitive damages, when the deprivation of federal rights results from enforcement of "a policy statement, ordinance, regulation, or decision officially adopted and promulgated" by the officers of a local governing body. Id. A municipality may not escape liability by claiming its officers or employees acted in good faith. Owen v. City of Independence, 445 U.S. 622 (1980). The Supreme Court ruled that granting a qualified or good faith immunity to a municipality was not compatible with Section 1983's fundamental purpose of remedying violations of federal rights. Id.

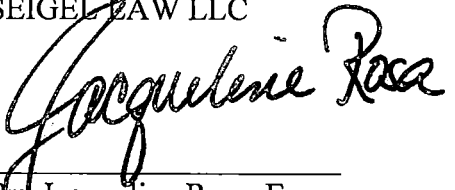
It is incumbent upon the Court to award Plaintiff damages not only for the violation of her Constitutional Rights under §1983, but also to set a deterrent for other towns that would think of enacting a similar Ordinance.

CONCLUSION

For all of the foregoing reasons, the Plaintiff should be award Summary Judgment and
Damages.

Date: July 12, 2018

SEIGEL LAW LLC


By: Jacqueline Rosa, Esq.

SEIGEL LAW FIRM LLC
Jacqueline Rosa – 009372010
505 Goffle Road
Ridgewood, NJ 07450
(201) 444-4000

JACQUELINE ROSA,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY

Plaintiff,

DOCKET NO. HUD-L-0607-18

v.

BOROUGH OF LEONIA, et al,

Defendants.

CERTIFICATION OF MAILING

STATE OF NEW JERSEY DEPARTMENT
OF TRANSPORTATION

v.

BOROUGH OF LEONIA, et al.

Defendants.

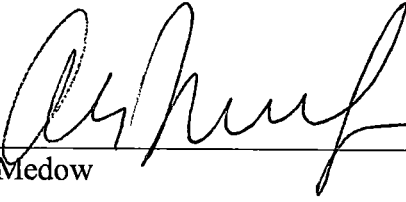
JACQUELINE ROSA,

ALLA MEDOW, by way of Certification, says that:

1. I am a Paralegal with the firm of Seigel Law LLC, attorneys for Plaintiff Jacqueline Rosa with regard to the above entitled matter.
2. I hereby certify that in accordance with R. 1:5-3, on July 16, 2018, I e-filed Plaintiff's Motion for Summary Judgment with Certification, supporting Brief and proposed form of Order with the Superior Court of New Jersey, Hudson County.
3. I further certify that in accordance with R. 1:5-3, on July 16, 2018, I mailed a copy of the Summary Judgment Motion documents in the above entitled matter via Lawyers Service to the Honorable Peter F. Bariso, J.S.C. at:

Superior Court of New Jersey
Hudson County Superior Court
583 Newark Avenue
Jersey City, NJ 07306

4. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully misleading or untrue, I am subject to Punishment.


Alla Medow

July 16, 2018

EXHIBIT U

CLEARY, GIACOBBE, ALFIERI, JACOBS, LLC

Ruby Kumar-Thompson, Esq. (Attorney ID No. 044951999)

169 Ramapo Valley Road

Upper Level – Suite 105

Oakland, New Jersey 07436

Telephone: (973)845-6700

JACQUELINE ROSA,

Plaintiff,

v.

BOROUGH OF LEONIA, BOROUGH OF
LEONIA COUNCIL, TOM ROWE in his
capacity as acting Borough Clerk of the
Borough of Leonia, JUDAH ZEIGLER, in his
official capacity as Mayor of the Borough of
Leonia, JOHN DOE MAINTENANCE
COMPANIES 1-5,

Defendants.

STATE OF NEW JERSEY DEPARTMENT
OF TRANSPORTATION,

Plaintiff-Intervenor,

v.

BOROUGH OF LEONIA, NEW JERSEY,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
DOCKET NO.: HUD-L-607-18

Civil Action

**NOTICE OF APPEARANCE FOR
RUBY KUMAR-THOMPSON, ESQ. ON
BEHALF OF DEFENDANTS**

PLEASE TAKE NOTICE that Ruby Kumar-Thompson, Esq., a Partner at the firm of Cleary, Giacobbe, Alfieri, & Jacobs, LLC, 169 Ramapo Valley Road, Upper Level-Suite 105, Oakland, New Jersey 07436, hereby enters her appearance as co-counsel for Defendants Borough of Leonia, Borough of Leonia Council, Tom Rowe, and Judah Zeigler in the above-captioned matter, and requests that copies of all notices, pleadings, and other papers filed in this matter also be served upon her.

Dated: August 1, 2018

By: *Ruby Kumar-Thompson*
RUBY KUMAR-THOMPSON, ESQ.