EXHIBIT GG



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

MICHELLE L. MILLER

October 3, 2018

Via eCourts and Overnight Delivery

Honorable Peter F. Bariso, Jr., A.J.S.C. Hudson County Administration Building 9th Floor - Chambers 906 595 Newark Avenue Jersey City, New Jersey 07306

Re: Jacqueline Rosa v. Borough of Leonia, et al. Docket No.: HUD-L-607-18

Letter Brief on Behalf of the New Jersey
Department of Transportation in Opposition to the
Borough of Leonia's Motion for Reconsideration
and for a Stay

Motion Return Date: October 12, 2018 Oral Argument Requested

Dear Judge Bariso:

On behalf of the State of New Jersey Department of Transportation ("DOT"), we respectfully request that Your Honor accept this letter brief, in lieu of a more formal brief, in opposition to the motion for reconsideration and for a stay filed by the Borough of Leonia ("Leonia").



PRELIMINARY STATEMENT

This court has properly determined that Leonia's traffic ordinances at issue in this case were legally invalid essentially because, although the ordinances placed an impact on a State roadway, Leonia failed to submit the ordinances to the DOT Commissioner for approval, as required by N.J.S.A. 39:4-8(a). Accordingly, this court entered an order for summary judgment in favor of the DOT on August 31, 2018.

Leonia's motion for reconsideration and for a stay is moot based on Leonia's adoption of new ordinances that supersede the ordinances that were the subject of the DOT's motion for summary judgment. In addition, in granting the DOT's motion for summary judgment, this court did not overlook or err as to any matters or controlling decisions. To the contrary, this court properly granted summary judgment as a matter of law. Further, Leonia has failed to present a basis for a stay. As such, Leonia's motion for reconsideration and for a stay should be denied.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

This case arose from Leonia's adoption and enforcement of traffic ordinance numbers 2017-19, 2018-2 and 2018-5 (hereinafter collectively referred to as "the old ordinances").

The DOT respectfully incorporates by reference the DOT's Statement of Facts, including the Statement of Material Facts, included in its briefs in support of its motion for summary judgment (DOT Exhibit C) and in opposition to Leonia's motion to dismiss (DOT

(DOT Exhibits F, G and H.) The old ordinances created a list of travel restrictions and road closures affecting more than 75 roads and intersections in Leonia during the hours of 6:00 a.m. to 10:00 a.m. and 4:00 p.m. to 9:00 p.m. These restrictions and road closures prohibited motorists from traveling through those streets during the applicable hours, including multiple streets intersecting with a State roadway, Grand Avenue (State Route 93).

Then, on June 11, 2018, the DOT filed its original complaint, seeking declaratory judgment and injunctive relief against Leonia concerning the old ordinances. Thereafter, on July 11, 2018, the DOT moved for summary judgment, requesting that this court declare the old ordinances null and void and legally invalid, and enjoin and restrain Leonia from the further enforcement of the same. (DOT Exhibit C.) The DOT's motion for summary judgment asserted that the old ordinances were legally invalid because: (1) Leonia had no legal authority to create "no through streets"; (2) Leonia had no legal authority to regulate traffic based on a residency classification or based on whether a person was travelling to and/or from a Leonia destination; and (3) although the old ordinances created an impact on a State highway, Leonia had failed to submit the old ordinances to the DOT Commissioner for approval. (DOT Exhibit C.)

Exhibit I)

This court granted the DOT's motion for summary judgment and entered an order for summary judgment on August 31, 2018, declaring the old ordinances legally invalid. (DOT Exhibits A and B.) This court properly determined that the ordinances were legally invalid essentially because, based on the plain language of the ordinances, although the old ordinances on their face impacted a State roadway, Leonia had failed to submit the old ordinances to the DOT Commissioner for approval, as required by (DOT Exhibit B.) Accordingly, this court N.J.S.A. 39:4-8(a). entered an order declaring that the old ordinances were null and void, and legally invalid as a matter of law. (DOT Exhibit A.) In addition, this court ordered that Leonia was enjoined and permanently restrained from the further enforcement of the old ordinances, including but not limited to the use of signage, police officials notifying motorists about the old ordinances, and the issuance of traffic citations. (DOT Exhibit A.)

In granting the DOT's motion for summary judgment, this court did not need to address certain additional legal arguments raised by the DOT. (DOT Exhibit B.) Despite this, Leonia misinterpreted this court's decision and on September 17, 2018, adopted two new ordinances, ordinance numbers 2018-14 and 2018-15 (hereinafter collectively referred to as "the new ordinances").

WHEREAS, Ordinance No. 2017-19 and 2018-

5 were invalidated by the Superior Court of New Jersey; and

WHEREAS, the Mayor and Council have reviewed the determination of the Court and have determined to revise same in order to address the decision rendered by the Superior Court.

[DOT Exhibits D and E.]

The new ordinances were not the subject of the DOT's motion for summary judgment. (DOT Exhibit C.)

LEGAL ARGUMENT

POINT I

BECAUSE LEONIA HAS ADOPTED THE NEW ORDINANCES, WHICH SUPERSEDE AND REPLACE THE OLD ORDINANCES, LEONIA'S MOTION FOR RECONISDERATION AND FOR A STAY IS MOOT AND SHOULD BE DENIED AS A MATTER OF LAW.

It is well established that issues rendered moot by subsequent developments are outside the proper realm of the courts.

See City of Camden v. Whitman, 325 N.J. Super. 236, 243 (App. Div. 1999) (courts do not resolve issues that have become moot due to intervening events). New Jersey's courts consider an issue moot when "the decision sought in a matter, when rendered, can have no practical effect on the existing controversy." Greenfield v. N.J. Dep't of Corr., 382 N.J. Super. 254, 257-58 (App. Div. 2006) (quoting N.Y. Susquehanna & W. Ry. Corp. v. N.J. Dep't of Treasury, Div. of Taxation, 6 N.J. Tax 575, 582 (Tax 1984), aff'd, 204 N.J. Super. 630 (App. Div. 1985)). And New Jersey's courts generally do

not render advisory decisions, for "[o]rdinarily, our interest in preserving judicial resources dictates that we not attempt to resolve legal issues in the abstract." Zirger v. Gen. Accident Ins. Co., 144 N.J. 327, 330 (1996) (citing Oxfeld v. N.J. State Bd. of Educ., 68 N.J. 301, 303-04 (1975) and Sente v. Mayor & Mun. Council of Clifton, 66 N.J. 204, 205 (1974)).

In our case, following this court's entry of the order for summary judgment on August 31, 2018, Leonia on September 17, 2018 adopted the new ordinances. (DOT Exhibits D and E.) The new ordinances supersede and replace the old ordinances, and the substantive provisions of the new ordinances control. (DOT Exhibits D and E.) Therefore, Leonia's motion for reconsideration and for a stay is moot and should be denied as a matter of law. See City of Camden v. Whitman, 325 N.J. Super. at 243.

POINT II

BECAUSE THIS COURT PROPERLY GRANTED THE DOT'S MOTION FOR SUMMARY JUDGMENT AS A MATTER OF LAW, LEONIA'S MOTION FOR RECONSIDERATION SHOULD BE DENIED.

Motions for reconsideration are governed by <u>Rule</u> 4:49-2, which provides that the motion "shall state with specificity the basis on which it is made, including a statement of matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred." The decision to grant or deny a motion for reconsideration rests within the sound discretion

of the trial court. Capital Fin. Co. of Delaware Valley, Inc. v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div.), certif. denied, 195 N.J. 521 (2008) (internal citations omitted).

Reconsideration should be used only where (1) the court has expressed its decision based upon a palpably incorrect or irrational basis, or (2) it is obvious that the court either did not consider, or failed to appreciate the significance of probative, competent evidence. Ibid. (quoting D'Atria v. D'Atria, Super. 392, 401 (Ch. Div. 1990)). Motions for 242 N.J. reconsideration should not "merely because be used of dissatisfaction with a decision of the Court." D'Atria v. D'Atria, 242 N.J. Super. at 401. In addition, Rule 4:49-2 "is not the vehicle for raising a new issue." See Naik v. Naik, 399 N.J. Super. 390, 395 (App. Div. 2008).

A. This court correctly analyzed the plain language of the applicable law and of the old ordinances in granting summary judgment.

In interpreting a statute, the overriding goal is to give effect to the Legislature's intent. DiProspero v. Penn, 183 N.J. 477, 492 (2005). "[T]he best indicator of that intent is the statutory language"; therefore, it is the first place to look. Ibid. (citation omitted). If the plain language leads to a clear and unambiguous result, then the interpretive process should end, without resort to extrinsic sources. Ibid. (citations omitted).

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.

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.

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.

Here, in granting the DOT's motion for summary judgment, this court correctly analyzed the plain language of the applicable law and of the old ordinances. In this regard, N.J.S.A. 39:4-8(a) provides:

Notwithstanding any other provision of this section to the contrary, any municipal or county ordinance, resolution, or regulation which places any impact on a State roadway shall require the approval of the commissioner.

[N.J.S.A. 39:4-8(a); emphasis added.]

In applying this statute in conjunction with the DOT's motion for

summary judgment, there was no dispute regarding the content of the old ordinances. In addition, this court properly determined that the plain language of the old ordinances revealed an impact on a State roadway. (DOT Exhibit B.) Further, it was factually undisputed that Leonia had failed to submit the old ordinances to the DOT Commissioner for approval.

Contrary to Leonia's argument, <u>Driscoll Constr. Co. v.</u>

<u>State</u>, 371 N.J. Super. 304 (App. Div. 2004), is not applicable here. In <u>Driscoll</u>, the court addressed a contract dispute between the DOT and a contractor arising from a highway project. <u>Id.</u> at 307-18. Unlike in <u>Driscoll</u>, this court granted summary judgment based on the plain language of a statute, N.J.S.A. 39:4-8, and of the old ordinances themselves. There is no contract at issue in this case. Further, even if this court were to consider the <u>Driscoll</u> decision by analogy, given the plain language of N.J.S.A. 39:4-8(a) and of the old ordinances themselves, there was no ambiguity or need for additional evidence to aid in interpretation. Accordingly, <u>Driscoll</u> is not applicable to this case.²

The DOT has not waived any of the additional arguments it asserted within its motion for summary judgment and in opposition to Leonia's motion to dismiss. For example, the DOT has not waived its arguments that Leonia had no legal authority to create "no through streets," or that Leonia had no legal authority to regulate traffic traveling through Leonia based on a residency classification or on whether a person was travelling to and/or from a Leonia destination.

Additionally, despite the plain language of N.J.S.A. 39:4-8(a), Leonia conflates the "undue traffic burden or impact" language of N.J.S.A. 39:4-8 with the "any impact" language of N.J.S.A. 39:4-8(a). Contrary to Leonia's argument, the plain language of N.J.S.A. 39:4-8(a) provides that, "Notwithstanding any other provision of this section to the contrary, any municipal.

. ordinance, resolution, or regulation which places any impact on a State roadway shall require the approval of the commissioner."

N.J.S.A. 39:4-8(a) (emphasis added). Leonia is simply misconstruing N.J.S.A. 39:4-8.

B. This court properly determined that there were no issues as to any material facts and that summary judgment was appropriate as a matter of law.

Additionally, actions in lieu of prerogative writ 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. Twp. 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).

This case was ripe for summary judgment, pursuant to R.
4-46-2. This action in lieu of prerogative writ vested this court with jurisdiction to review the actions of Leonia to ensure that Leonia was acting within its jurisdiction and according to law.

Paruszewski v. Twp. of Elsinboro, 154 N.J. at 58. This court's interpretation of the old ordinances was purely a legal matter as to which Leonia had no peculiar skill superior to this court's.

Grancagnola v. Planning Bd. of Verona, 221 N.J. Super. at 75.

Based on an analysis of the plain language of the applicable statutes within Title 39, and the language of the old ordinances, this court properly determined that the ordinances were legally invalid. This determination did not require any discovery.

Moreover, even beyond the plain language of the old ordinances, the certification of DOT traffic engineer Mark A. Hiestand described the old ordinances' impact on a State roadway, pursuant to the applicable regulation, N.J.A.C. 16:27-2.1. (Leonia in its motion brief misspells Mr. Hiestand's name as "Heeston.") Mr. Hiestand's certification indicated that the old

³Contrary to Leonia's argument, the DOT on eCourts filed/served Mr. Hiestand's certification with the DOT's motion for summary judgment on July 11, 2018. (DOT Exhibit C.) As of July 11, 2018, Leonia was already represented by Brian M Chewcaskie of Gittleman Muhlstock & Chewcaskie. Mr. Hiestand's certification has remained on eCourts since the DOT filed its motion for summary judgment on

ordinances had an impact on a State highway as defined by N.J.A.C. 16:27-2.1, because the old ordinances: (a) impacted 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) impacted traffic within 500 feet of State Route 93 because Leonia has installed signs on the aforementioned municipal streets adjacent to the state highway. (DOT Exhibit C, Statement of Material Facts, Paragraph 7.)

In response to the DOT's Statement of Material Facts, which the DOT filed on eCourts with its motion for summary judgment on July 11, 2018, Leonia had almost six weeks to provide admissible evidence to attempt to dispute these facts before Leonia filed its brief and supporting papers on August 21, 2018. Despite this, in

July 11, 2018. In addition, the DOT referred to Mr. Hiestand's certification at pages 3, 4, 6, 7, 10, 11, 16 and 18 of the brief in support of the DOT's motion for summary judgment, and paragraphs 2 through 8 of the DOT's Statement of Material Facts. (DOT Exhibit C.) In fact, Leonia admitted to paragraphs 4, 5, 6 and 8 of the DOT's Statement of Material Facts, which were based on Mr. Hiestand's certification. (DOT Exhibit K.) Then, the DOT referenced Mr. Hiestand's certification at pages 3, 4, 5, 6 and 15 of the DOT's letter brief in opposition to Leonia's motion to dismiss. (DOT Exhibit I.) As such, Leonia argument regarding the DOT's filing/service of Mr. Hiestand's certification is baseless.

response to paragraph 7 of the DOT's Statement of Material Facts, Leonia simply stated, "Denied." As such, Leonia did not specifically dispute paragraph 7 of the DOT's Statement of Material Facts with a citation demonstrating the existence of a genuine issue as to the facts, in conformance with Rule 4:46-2(a). (DOT Exhibit K.) Therefore, the material facts included within paragraph 7 of the DOT's Statement of Material Facts were deemed admitted for purposes of the DOT's motion, pursuant to Rule 4:46-2(b). Accordingly, the DOT's statement of why the old ordinances had an impact on a State highway was factually undisputed, pursuant to the Rules of Court. R. 4:46-2(b).

C. Leonia's new ordinances are not relevant to its motion for reconsideration.

Leonia's attempt to raise the issue of its adoption of new ordinances is not relevant to this motion for reconsideration. The new ordinances were not the subject of the DOT's motion for summary judgment and <u>Rule</u> 4:49-2 is not the vehicle for raising this new issue. See Naik v. Naik, 399 N.J. Super. at 395.4

POINT III

BECAUSE THE OLD ORDINANCES PLACED AN IMPACT ON A STATE HIGHWAY, PURSUANT TO N.J.S.A. 39:4-8(a), LEONIA WAS REQUIRED TO SUBMIT THE ORDINANCES IN THEIR ENTIRETY TO THE DOT COMMISSIONER FOR APPROVAL.

⁴ By a separate motion, the DOT has requested leave to file an amended complaint regarding the new ordinances.

As a threshold matter, as discussed above under Point I, because Leonia has adopted the new ordinances, which supersede the old ordinances that were the subject of the DOT's motion for summary judgment, Leonia's motion for reconsideration and for a stay is moot. Moreover, as discussed above under Point II, this court properly granted the DOT's motion for summary judgment, pursuant to N.J.S.A. 39:4-8(a), which provides:

Notwithstanding any other provision of this section to the contrary, any municipal . . . ordinance, resolution, or regulation which places any impact on a State roadway shall require the approval of the commissioner.

[N.J.S.A. 39:4-8(a) (emphasis added).]

Therefore, the plain language of N.J.S.A. 39:4-8(a) requires approval of any ordinance, as a whole, by the DOT Commissioner if the ordinance places an impact on a state roadway.

Moreover, when the DOT Commissioner's approval of an ordinance is required, N.J.S.A. 39:4-8(a) details the DOT's review process as follows:

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. The commissioner may invalidate the provisions of the ordinance, resolution, or regulation if the commissioner finds that the provisions of the ordinance, resolution, or regulation are inconsistent with the Manual on Uniform Traffic Control Devices for Streets and Highways, inconsistent with accepted engineering standards, are not based on the results of an accurate traffic and engineering survey, or place an undue traffic burden or impact on the State highway system, or affect the flow of traffic on the State highway system.

Given this statutorily detailed review process by the DOT, the old ordinances did not simply present an opportunity for "judicial pruning." Instead, because this review process by the DOT is the statutorily required next step, Leonia's argument regarding severability is incorrect as a matter of law. N.J.S.A. 39:4-8(a).

Additionally, the cases on which Leonia relies in arguing for severability do not address Title 39, including N.J.S.A. 39:4-8, nor do they address traffic ordinances in the context presented in our case. For example, Leonia relies on cases

The "undue traffic burden or impact" language regarding the DOT Commissioner's findings is separate and distinct from the "any impact" language of N.J.S.A. 39:4-8(a) regarding the necessity for the DOT Commissioner's approval.

⁶Before Leonia acted to enforce the old ordinances, if Leonia had complied with the statutory review process detailed by N.J.S.A. 39:4-8(a), and Leonia had been dissatisfied with the DOT's decision, Leonia could have filed a direct appeal to the Appellate Division, pursuant to R. 2:2-3(a)(2). Instead, Leonia disregarded this process, and adopted and enforced the old ordinances without the DOT's review, resulting in the current action before this court.

that are distinguishable in that they address severability in the constitutional context and/or in the context of zoning. See, e.g., Adams Newark Theatre Co. v. City of Newark, 22 N.J. 472 (1956) (ordinances challenged for violating right to freedom of speech); United Property Owners Association of Belmar v. Borough of Belmar, 343 N.J. Super. 1 (App. Div. 2001), certif. denied, 170 N.J. 390 (2001) (ordinances challenged for equal protection and/or due process violations); Washington Twp. v. Central Bergen Community Mental Health Center, Inc., 156 N.J. Super. 388 (Law Div. 1978) (zoning ordinance challenged for excluding certain classes of persons from occupancy of residential dwellings). As such, the cases on which Leonia relies are not applicable.

Moreover, the question of whether an invalid provision may be considered severable necessarily turns on both legislative intent, as well as "whether the remaining provisions are functionally self-sufficient as containing the essentials of a complete enactment." State v. McCormack Terminal, Inc., 191 N.J. Super. 48, 52 (App. Div. 1983) (quoting Gross v. Allan, 37 N.J. Super. 262, 269 (App. Div. 1955)). Stated differently, the remaining provisions of the ordinance must be legally valid in order for severability to be proper. See United Property Owners Association of Belmar v. Borough of Belmar, 343 N.J. Super. at 39 (indicating that severability can only occur wherein "the

remaining provisions present a viable legislative action, constitutionally sound, and capable of lawful enforcement").

Contrary to Leonia's argument, in rendering its decision, this court properly found that the old ordinances, in their entirety, were legally invalid as a matter of law because they placed an impact on a State roadway and Leonia had failed to submit the old ordinances to the DOT for approval in accordance with N.J.S.A. 39:4-8(a). In rendering this decision, this court did not reach the merits of the DOT's remaining substantive arguments regarding the invalidity of the old ordinances, nor did it need to. However, the remaining provisions of the old ordinances were also legally invalid, as the DOT, in effect, asserted in its motion for summary judgment. Therefore, the remaining provisions of the old ordinances were not functionally self-sufficient and did not contain the essentials of a complete enactment. Accordingly, Leonia's argument regarding severability is incorrect as a matter of law.

POINT IV

LEONIA'S STAY APPLICATION SHOULD BE DENIED BECAUSE LEONIA CANNOT DEMONSTRATE ANY OF THE CRITERIA NECESSARY FOR SUCH EXTRAORDINARY RELIEF.

The test for granting injunctive relief, such as a stay of a court order, is well-established. To justify the grant of such an extraordinary interim restraint, the party seeking relief

must demonstrate the existence of each of the following elements:

(1) a clear probability that it will prevail on the merits of the underlying controversy; (2) that its legal rights are based upon settled law; (3) that, in the absence of a stay, the movant will suffer irreparable injury; and (4) that the probability of harm to other persons will not be greater than the harm the movant will suffer in the absence of such a stay. Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982); see also Garden State Equality v. Dow, 216 N.J. 314, 320 (2013) (applications for stay pending appeal are governed by the Crowe standard).

Leonia did not address any of the aforementioned factors in seeking a stay. Moreover, as discussed more fully below, because Leonia cannot meet this high standard to afford it injunctive relief, its request for a stay of the court's August 31, 2018 order should be denied.

A. Leonia Cannot Show a Reasonable Probability of Success on the Merits.

To prevail on an application for injunctive relief, an applicant must make a preliminary showing of reasonable probability of ultimate success on the merits. Crowe v. DeGioia, 90 N.J. at 133. Courts will examine whether the movant has "demonstrated that the material facts favored in its position . . and, also, whether the law upon which [the movant's] claim is based is will settled." Waste Mgmt. of N.J. v. Union Cty. Utils.

Auth., 399 N.J. Super. 508, 528 (App. Div. 2008). Leonia has not satisfied this burden.

As a threshold matter, as discussed above in Point I, Leonia's arguments regarding the old ordinances are moot as a matter of law. Therefore, Leonia cannot make a preliminary showing of a reasonable probability of ultimate success on the merits. Crowe v. DeGioia, 90 N.J. at 133.

In addition, as this brief discusses above, despite the old ordinances' impact on a State roadway on their face and the plain language of N.J.S.A. 39:4-8(a), Leonia failed to seek the DOT Commissioner's approval of the old ordinances. As such, this court properly determined that the old ordinances were legally invalid.

Accordingly, Leonia cannot establish a reasonable probability of success on the merits. For this reason, Leonoia's stay application should be denied.

B. Leonia Cannot Show That It Will Be Irreparably Harmed or That Any Harm to It Will Be Greater Than the Harm to the NJDOT or the Public if the Stay Were Not Granted.

Leonia also cannot show that it will suffer irreparable harm, let alone harm exceeding that to the NJDOT and the motoring public, if the stay is not granted. Crowe v. DeGioia, 90 N.J. at 132-34.

As a threshold matter, because the new ordinances supersede and replace the old ordinances and the substantive

provisions of the new ordinances control, any harm that Leonia would allegedly have suffered by operation of the August 31, 2018 order has been rendered moot through its own actions. Therefore, Leonia's argument regarding the necessity for a stay is without merit.

In addition, in its motion, Leonia has not alleged any irreparable harm that it would suffer, but instead contends that a stay should be entered to afford it the opportunity to "cure the prior procedural defects." Notwithstanding the fact that the DOT has not waived any of the additional arguments asserted within its motion for summary judgment or in opposition to Leonia's motion to dismiss, which addressed the substantive defects of the old ordinances, the question of the new ordinances' legal validity is not properly before the court at this time, as this brief discusses above.

Further, the harm to the DOT and the motoring public outweighs any alleged harm that Leonia could suffer. In this regard, if a stay were to be entered, Leonia would be free to enforce the old and/or new ordinances, contrary to the express provisions of Title 39, as discussed above. And if municipalities across the State were deemed to have such presumptive legal authority to adopt such ordinances, contrary to Title 39, we could reasonably anticipate the potential traffic problems that could

ensue, particularly in the more densely populated regions of the State.

Accordingly, Leonia's request for a stay should be denied. See Crowe v. DeGioia, 90 N.J. at 132-34.

CONCLUSION

For the foregoing reasons, the DOT respectfully submits that Leonia's motion for reconsideration and for a stay should be denied.

Respectfully submitted,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

Bv.

Philip J. Espinosa

Deputy Attorney General

(Attorney ID No. 030311988)

Ryne A. Spengler

Deputy Attorney General

(Attorney ID No. 169002015)

Encl.

cc via eCourts and email:

Jacqueline M. Rosa, Esq.

Brian M. Chewcaskie, Esq.

Ruby Kumar-Thompson, Esq.

DOT EXHIBIT A

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.

JERSEY,

BOROUGH OF LEONIA, NEW

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 30th day of August, 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.
 - 3. Reasons placed on the record on August 30, 2018.
 - 4. Uploaded in eCourts.

Chief M.	

Hon. Peter F. Bariso, Jr., A.J.S.C.

X		Opposed	
		Unopposed	

DOT EXHIBIT B

SUPERIOR COURT OF NEW JERSEY LAW DIVISION, CIVIL PART HUDSON COUNTY DOCKET NO. HUD-L-000607-18 JACQUELINE ROSA and STATE OF NEW JERSEY DEPARTMENT OF TRANSCRIPT TRANSPORTATION, OF Plaintiffs, MOTIONS FOR SUMMARY JUDGMENT v. BOROUGH OF LEONIA, et al., Defendants. Place: Hudson County Courthouse Administration Building 595 Newark Avenue Jersey City, NJ 07306 Date: August 30, 2018 **BEFORE:** THE HONORABLE PETER F. BARISO, JR., A.J.S.C. TRANSCRIPT ORDERED BY: RYNE A. SPENGLER, ESQ., DEPUTY ATTORNEY GENERAL APPEARANCES: JACQUELINE ROSA, ESQ., PLAINTIFF, PRO SE PHILIP ESPINOSA, ESQ., DEPUTY ATTORNEY GENERAL Attorney for the Defendant, Department of Transportation BRIAN CHEWCASKIE, ESQ. (Gittleman, Muhlstock & Chewcaskie, L.L.P.) Attorney for Defendant, Borough of Leonia RUBY KUMAR-THOMPSON, ESQ., (Cleary, Giacobbe, Alfieri, Jacobs, L.L.C.) Attorney for Defendant, Borough of Leonia Transcriber, Karen English Karen English Transcription Svc. P.O. Box 1276 Island Heights, NJ 08732 (732) 255-1247 - Fax (732) 255-1366 Electronically Sound Recorded

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THE COURT: All right. This is docket number L-607-18, Jacqueline Rosa versus Borough of Leonia, et al. It's a return date for various summary judgment motions.

May I please have counsel's appearances and would you spell your last name for the record for me?

MS. ROSA: Good morning, Judge. Jacqueline

Rosa from Seigel Law, pro se plaintiff. R-O-S-A.

THE COURT: Good morning.

MR. ESPINOSA: Your Honor, Philip Espinosa, Deputy Attorney General, E-S-P-I-N-O-S-A, on behalf of the New Jersey Department of Transportation.

THE COURT: Good morning.
MR. ESPINOSA: Good morning.

MR. CHEWCASKIE: Good morning, Your Honor.

Brian Chewcaskie, Gittleman, Muhlstock & Chewcaskie, on behalf of the Borough of Leonia. C-H-E-W-C-A-S-K-I-E.

THE COURT: Good morning.

MR. CHEWCASKIE: Good morning.

MS. KUMAR-THOMPSON: Good morning, Your

Honor. Ruby Kumar-Thompson with the law firm of Cleary, Giacobbe, Alfieri & Jacobs, also here on behalf of the Borough of Leonia.

THE COURT: Good morning. Okay. So, what I have, and I just want to put on the record so we make

sure we're discussing all the submissions. I have a motion for summary judgment filed by the Attorney General's office on behalf of the Department of Transportation. I have a motion for summary judgment filed by plaintiff Jacqueline Rosa.

I have a cross-motion in opposition and for summary judgment filed by the Borough of Leonia as to the Department of Transportation and a cross-motion in opposition and for summary judgment as to plaintiff Jacqueline Rosa. I have received a reply to the opposition and cross-motion by the Department of Transportation by the Deputy Attorney General's Office, and I have received a reply to the opposition and cross-motion filed by plaintiff Jacqueline Rosa.

Am I missing any submissions?

MR. CHEWCASKIE: I think that covers it all,
Your Honor.

THE COURT: Okay. All right. So, initially, let me just say that this matter has been extensively briefed by the parties. I'm not going to recount all of the procedural history in the case. We know that this has started -- it was filed back in January, I believe. And we had several case management conferences and hearings in March and May.

Now I have these motions filed in front of

me. A lot of the briefing -- and we have reviewed the documents that have been submitted, and obviously, are part of the record, an extensive record. However, in terms of my questionings this morning, some of the facts and discussions in the papers, while certainly relevant to the parties, the Court does not feel are necessarily relevant to the decision that I have to make here today.

So, my questions are going to be somewhat limited. However, at the end I certainly will allow counsel an opportunity — although they have expressed themselves quite extensively in their briefs, if they felt they wanted to add anything else to the record I would give them that opportunity at the end. So, I have a few initial questions I'd like to start with, and I'm going to direct those to the Borough.

Your initial position regarding the Department of Transportation in your cross-motion lays out that they're not entitled to bring either a prerogative writ action or a declaratory judgment action. Having reviewed the Deputy Attorney General's response in their letter brief of August 24, 2018, how does that case law not support their position that they're entitled to bring this action?

MR. CHEWCASKIE: Judge, the one case that was

missed by the DOT regarding declaratory judgment action was Bergen County v. Port of New York Authority. That's at 32 N.J. 303 and that's a 1960 decision. And what that court said is that it distinguishes actual harm from an action merely to vindicate the general public interest upon an allegation that another agency or government is exceeding its statutory powers and disallowed the process of a declaratory judgment in that action.

What's interesting is all the cases that were cited by the Attorney General basically go back to various years roughly between 1955 and 1962. Those cases dealt with actual harm. The initial case, which would involve the highway commissioner was a condemnation action to take land for the purpose of building Route 4 and the Garden State Parkway, which involved the cemetery. And what the interest of the public was to be protected there.

In this instance, if we go to the <u>Port</u>
<u>Authority of New York</u> case, this is merely, what's the public interest here? They haven't asserted it.

THE COURT: All right. But --

MR. CHEWCASKIE: This is just an action of an agency that says this -- we need to look at this. And we'll certainly get into that law, but the prefatory is

THE COURT: But isn't it -- isn't it more than that? I mean, their position is, you're violating a statute and you're disregarding the powers of the DOT, of the Commissioner of Transportation. If I was to accept your argument, how does the Department of Transportation enforce their position that they must approve this ordinance?

MR. CHEWCASKIE: The question is very -- or, the answer to that question is very simple. There's nothing that precludes the Borough of Leonia from adopting any ordinance to regulate traffic.

THE COURT: All right. Let's not get to the merits of the case.

MR. CHEWCASKIE: But I'm just -- but I'm just -- but I'm just --

THE COURT: Let's get to my question. My question is, if the commissioner feels your ordinance requires his or her approval and you disagree, what do they do to enforce their position or at least have their position explored?

MR. CHEWCASKIE: Right. First, the commissioner has to make a decision.

THE COURT: I think he did. I think the Deputy Attorney General told you that your ordinance is

THE COURT: Well, I don't have any of those submissions. I asked this question in January. request been made to the commissioner to approve this ordinance? And nothing has been submitted to me that

says you made a request and this was the support you gave. So, if there is something, I don't have it. MR. CHEWCASKIE: And we made that request,

Judge. You have the certification of the mayor that said, to the extent that we need the approval, that approval is being requested in response to a letter that we got from the DOT -- that the Borough received from the DOT.

THE COURT: Okay.

MR. CHEWCASKIE: This is not the Attorney General's decision. This is the commissioner's

decision.

THE COURT: Okay. I'll --

MR. CHEWCASKIE: I have nothing from the commissioner that this was acted upon, this was acted in accordance with the statute, and we're even making the assumption that it is required, because the language of the statute is quite clear. We have the right to adopt an ordinance and the commissioner then makes a decision. Not the Attorney General. It says the commissioner. The commissioner here is silent or has been silent for other reasons.

THE COURT: Has an action been made by the Borough, a prerogative writ action to compel the commissioner to make a decision?

MR. CHEWCASKIE: No.

THE COURT: Isn't that an appropriate application when a government does not act properly? think it's called mandamus.

MR. CHEWCASKIE: Right. It is called

mandamus.

Well, was that ever made by THE COURT:

Leonia?

MR. CHEWCASKIE: No .

THE COURT: Okay.

MR. CHEWCASKIE: No. But that's not a 9

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prerequisite for the DOT to take an action, Judge.

THE COURT: No. I'm just asking, because as I said initially, we have a fundamental disagreement over the language of the statute. I said that in January, I said that in March, I believe I said that in May, and I will continue to say that at the end of the hearing today. So, my problem is, no decision has been made by the commissioner. So, I don't know whether the commissioner has approved or disapproved.

MR. CHEWCASKIE: That is correct.

THE COURT: But I do know, and I know you disagree with me, that the statute clearly says they must approve it.

MR. CHEWCASKIE: No. I didn't say that,

THE COURT: No, no. I'm saying that. I said you and I disagree on that. We disagreed on this since January. I believe the statute is clear. It requires the approval of the commissioner. Now, if your argument is, well, Judge, they're delaying and they haven't approved it, okay, then make your application because you have the right to make that application.

I understand what the mayor's certification says, but it would appear to me that if you were seeking the approval of the commissioner, you would

have sent everything down to them before you erected any signs, before you did anything, and said, here's what we want to do. Will you approve this? I have yet to see that document.

MR. CHEWCASKIE: And we had a meeting with the --

THE COURT: You had a meeting because in March, there was a discussion that there was a meeting with DOT representatives because I believe the Court said, have you sent this to the DOT? And that's when the first meeting was, I believe. In March. There were other meetings, but I have yet to receive anything that says it's been approved.

MR. CHEWCASKIE: And so have we. We haven't received anything.

THE COURT: Well, because I don't know if you asked them to approve it.

MR. CHEWCASKIE: And we did.

THE COURT: I know there's a meeting. I know there's letters attached. I saw what the DOT's position was. They made suggestions to your client that your client rejected. That's all to me almost like settlement negotiations in the case. That's what they were in my opinion. I have yet to see an application to the commissioner setting forth your

Judge.

reasons why you're doing something so that the commissioner can make an informed decision that I think you may have the right to challenge. But he -- but I don't know what's been given.

MR. CHEWCASKIE: And the May 10th letter that was sent by the mayor sets forth exactly -- every and

THE COURT: So, that's what you're going to rely on is the mayor's May 10 letter.

all reasons why this was done.

MR. CHEWCASKIE: Take that in conjunction with the various meetings that you have and also the certification from the police chief, Thomas Rowe. When you look at all that and put it together, it's what did Leonia do? Leonia enacted an ordinance to deal with the traffic conditions that the Borough of Fort Lee has been doing with 15 -- for 15 years without an ordinance. So, when Leonia did it --

THE COURT: Where is there evidence to the Court that Fort Lee passed an ordinance without the approval of the commissioner? Let's not mix apples and oranges. You can't come in front of me and say because the car behind me didn't get a ticket, I shouldn't get one.

 $$\operatorname{MR}.$ CHEWCASKIE: And I will tell you this, Judge.

THE COURT: I have no ordinance in front of me from Fort Lee.

 $$\operatorname{MR}.$ CHEWCASKIE: There is no ordinance in Fort Lee.

THE COURT: Okay. So, we're talking about apples and oranges.

MR. CHEWCASKIE: Okay.

THE COURT: In this case, it's simple, in my opinion. They are saying the following: you have enacted a motor vehicle ordinance contrary to the statute because you did not seek approval from the commissioner. That's what the DAG's motion is. No one is accusing you of acting -- well, the DAG has not raised the issue of arbitrary and capricious. The DAG has, in fact, for purposes of the motion, admitted to your factual background, has not disputed them, and has not asked you to prove them.

So, the DAG's motion is very limited. You did not seek the approval -- or, I should say it better. You have not obtained the approval of the commissioner of the DOT. That's their position. They're not disputing everything you've done, the police certification, the mayor's certification. He has admitted those for purposes of this motion even though he doesn't have sufficient knowledge.

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                  So, for purposes of this motion as to the
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        DOT, and as to the statute, what, if anything, is a
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        material factual dispute?
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                  MR. CHEWCASKIE:
                                  The statute, 8A --
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                  THE COURT:
                              That's not a factual dispute.
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                  MR. CHEWCASKIE: No, no.
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                  THE COURT: I want to know -- I want my
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        question answered first, Counsel, because there's a
        reason I'm asking this. Is there a material factual
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        dispute as to the Attorney General's motion for summary
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        judgment? That's the first question.
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                  MR. CHEWCASKIE:
                                  The first question -- the
        response to that is, were the ordinances supplied to
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        the DOT for review? The answer is yes, they did
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        receive it.
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                  THE COURT: Okay. So, there is a factual
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        dispute as to whether they received the --
                  MR. CHEWCASKIE: There's a factual dispute.
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                  THE COURT: Okay. Is there a factual dispute
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        as to whether or not you've obtained approval?
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                  MR. CHEWCASKIE: Yes.
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                  THE COURT:
                             You're saying you did.
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                  MR. CHEWCASKIE: I'm saying we didn't.
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        There's been no response.
                              I think they're saying you
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                  THE COURT:
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        didn't, so where's the dispute?
                  MR. CHEWCASKIE: There's no dispute.
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        never had a response, Judge.
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                  THE COURT: Okay.
                                     That's the question,
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                  This is your chance to tell me --
        Counsel.
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                  MR. CHEWCASKIE: Right.
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                             -- there's a material factual
                  THE COURT:
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        dispute as to the State's motion.
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                  MR. CHEWCASKIE: There was no response from
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        the DOT.
                  THE COURT: Okay.
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                  MR. CHEWCASKIE: I don't even know if we get
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        there.
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                  THE COURT: Okay. All right.
                                                 So, if I
        follow your position, what does the DOT do to enforce
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        their position if they cannot make an application
        either for declaratory judgment or prerogative writ.
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        Tell me what they do.
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                  MR. CHEWCASKIE: The first aspect is the DOT
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        has to act before it can take a position. They have
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        not acted, Judge.
                              I think they have. So, let's go
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                  THE COURT:
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        on to the next step. Assume they acted and said you
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        don't have our approval. Tell me what they can do to
        enforce their position if they can't do a declaratory
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judgment or prerogative writ action.

MR. CHEWCASKIE: There's nothing under Title 39 that gives the commissioner to take any action.

THE COURT: Well, I'm not asking under Title 39. I'm asking you as a Superior Court judge who resolves conflicts.

MR. CHEWCASKIE: I would say --

THE COURT: If I follow your position that the DOT cannot file a DJ action, cannot file a prerogative writ action, tell me what the commissioner does to enforce his statutory right.

MR. CHEWCASKIE: Issue --

THE COURT: Whether you agree with him or not. He's taking a position I have a statutory right. I must approve this ordinance. You disagree. What do they do?

MR. CHEWCASKIE: They can issue administrative orders.

THE COURT: And what does that do?

MR. CHEWCASKIE: That issues an order from

the agency in charge, Judge.

THE COURT: Okay.

MR. CHEWCASKIE: As I indicated, I think its premature. I think there needs to be an action. You're saying

THE COURT: There is an action. They just filed it.

MR. CHEWCASKIE: Yeah. Borough --

THE COURT: And you're saying they're not allowed to do it.

MR. CHEWCASKIE: And you're saying, Borough, you should have submitted -- you should have filed an action against the DOT --

THE COURT: No, no. I didn't --

MR. CHEWCASKIE: -- to get a response.

THE COURT: I didn't say that. I said that after your argument that you didn't get a response. There's a disagreement whether you've asked for approval. That's a factual dispute. There is no factual dispute that you didn't get approval. That's the basis of their motion. So, one of the cases you cite, the Sheridan case, Cedar Grove, on page 273, says:

"Cedar Grove has a sufficient stake in the subject matter to the interest of individual justice, along with the public interest, always bearing in mind that throughout our law we have been sweepingly rejecting procedural frustrations in favor of just and expeditious determinations on the ultimate merits."

So, if -- even if I were to accept your

position, which I don't, but even if I were to accept your position, they're not allowed to file a DJ, they're not allowed to file a prerogative writ. A case you cited to me stands for the proposition that I have to make a decision here, right?

MR. CHEWCASKIE: We've asked you to make a decision, Judge. That's why we cross-moved.

THE COURT: Okay. Now, another case that you rely on, <u>Samuel Brain</u>, (phonetic) which is extensively cited on page 17 of your brief. That's the case dealing with the trucks, right? There was an exclusion of a certain class of vehicles on the municipal streets.

 $$\operatorname{MR}.$ CHEWCASKIE: Yes. I have it in front of me, Your Honor.

THE COURT: Right. And you cited that -- MR. CHEWCASKIE: Yes.

THE COURT: -- because it says that the police powers delegated to the municipalities, right?

MR. CHEWCASKIE: Correct, Judge.

THE COURT: Okay. Right in the beginning of the opinion is something very interesting that's not cited by anybody as I read the case on page 477:

"The ordinance was approved by the state director of motor vehicles pursuant to R.S. 39:4-8."

Doesn't that distinguish that case? MS. KUMAR-THOMPSON: No, Your Honor.

THE COURT: Why not?

MS. KUMAR-THOMPSON: That's because this case was out of 1958 where approval -- pre-approval was required by the commissioner. I think that's the point that we were trying to make in our briefs, is that prior to 2008 it's clear that preapproval and everything -- every opinion before that -- and that's what they're relying upon in 39:4-8. And I think I laid out in my papers, and I think it was clear what our position is in terms of what the change was and how they changed three statutes, not just one.

THE COURT: Right.

MS. KUMAR-THOMPSON: They changed 39:4-8, they changed 39:4-197, and they've changed 39:4-202.

THE COURT: Well, what they didn't change in

4-8 is the third paragraph, right?

MS. KUMAR-THOMPSON: The third paragraph pertaining to approval?

THE COURT: Which says, "notwithstanding any other provision of this section to the contrary, any municipal or county ordinance, resolution, or regulation, which places any impact on a state roadway shall require the approval of the commissioner."

What's not clear about that paragraph?

MS. KUMAR-THOMPSON: So, the second issue with that paragraph, and I think we addressed that as

THE COURT: You conflate that.
MS. KUMAR-THOMPSON: No. I read --

THE COURT: It's not undue. It says "any

impact" on this paragraph.

well --

MS. KUMAR-THOMPSON: Your Honor, I think we said the statutes need to be read as a whole and therefore because of the disapproval -- the statute also outlines disapproval and the regulations --

THE COURT: Yeah. But when --

MS. KUMAR-THOMPSON: When they say that you cannot disapprove it unless there's an undue impact, that also constrains the DOT's --

THE COURT: Yeah, but --

MS. KUMAR-THOMPSON: -- ability to just

disapprove ordinances nilly-willy.

THE COURT: No. But when a statute starts off with, or when this provision starts off with, "Notwithstanding any other provision of this section to the contrary," that's a pretty powerful initial statement.

MS. KUMAR-THOMPSON: I agree.

THE COURT: At least in my interpretations of statutes. When you start off with language that says, "Notwithstanding any other provision of this section to the contrary," that has a plain meaning that if there's anything in conflict with this, this controls.

MS. KUMAR-THOMPSON: And so turning back to your question as to whether or not there's a factual dispute, there is a factual dispute with respect to whether there has even been an impact on adjoining municipalities.

THE COURT: It has nothing to do with joint municipalities. It's whether it has an impact on a state roadway.

MS. KUMAR-THOMPSON: And state roadways.
MR. CHEWCASKIE: And, Judge, just to add to
that one point, there is one state roadway that we are
talking about, and that's Grand Avenue. That's Route
93.

THE COURT: Yeah.

MR. CHEWCASKIE: That does not include any of the other roadways within the Borough. As outlined in Chief Rowe's certification, there were 44 local roadways that are impacted by this ordinance and --THE COURT: Yeah, but we don't get to pick

THE COURT: Yeah, but we don't get to pick and choose what part of the ordinance is enforceable

and which one isn't. This is a straightforward question. Does the ordinance require approval of the commissioner? Not, does section a, b and c require it, but not d and e? It's, does the ordinance require the approval of the commissioner? That's the -- that's the decision the Court's got to make today.

MR. CHEWCASKIE: And if I may, Your Honor, it requires the approval of the commissioner based upon the language of the statute, if there is impact on the state highway. And although there's a regulation cited by the -- by the DAG, that impact has not been identified.

THE COURT: Well, doesn't it prevent people from entering the state roadway?

MR. CHEWCASKIE: No.

THE COURT: No?

MR. CHEWCASKIE: No.

THE COURT: Then I missed the whole argument the first time. None of these restrictions prevent non-residents from getting onto a state roadway?

MR. CHEWCASKIE: Not at all. It prevents if you are on the state highway from making a turn. There's nothing that says you're not coming down that local street --

THE COURT: So, you can't turn off the state

highway into your town. I got it backwards

MR. CHEWCASKIE: You can't --

THE COURT: In other words, you can enter, but you can't get off.

MR. CHEWCASKIE: There are -- you can come onto Grand Avenue. You can turn onto various streets within Leonia, but one of them, Fort Lee Road, the other being Hillside, these are controlled intersections. Those controlled intersections where there are traffic lights, as we indicated in our papers, those signs were taken down, and I think they were taken down at the time we were here on the preliminary injunction.

So, if you're on Route 93, whether you're heading north or south, and there is a light-controlled intersection, you can make those turns. And some of those turns are on local streets. We --

THE COURT: All right. So, you're -- all right. So, you're telling me now that there is a factual dispute and the factual dispute is that this ordinance does not impact in any way a state roadway.

MR. CHEWCASKIE: Correct. And you have other aspects of that ordinance, you know, that you have to look at. The one roadway is the north/south Route 93, which is Grand Avenue. It comes -- it goes from

1 Englewood into Leonia, then into Palisades Park. 2 controlled intersections in Leonia, you can make right 3 or left turns. And by controlled, I mean those 4 controlled by a traffic light. If there is a street 5 that is not controlled by that traffic light, I submit 6 the sign is there, which would prohibit making that 7 left or right turn. 8 THE COURT: Well, then how does that not 9 impact traffic on a state roadway? 10 MR. CHEWCASKIE: Because you could --11 THE COURT: I'm confused. You're telling me 12 there's no impact, but now you're saying there's no 13 impact where there's a traffic light, but if there's no 14 traffic light they can't turn on the street. 15 MR. CHEWCASKIE: Then, Judge, you're making 16 the assumption --17 THE COURT: 18 I'm asking you a question. 19

I'm not making any assumption...

Is that accurate?

MR. CHEWCASKIE: Okay. But --

THE COURT: Only where there's traffic lights, they can turn. If there's no traffic light, they can't turn. Is that what you're telling me? MR. CHEWCASKIE: Yes.

THE COURT: And you're saying that's not an impact on a state roadway? That's what I'm hearing,

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Counsel.

MR. CHEWCASKIE: I don't -- I don't believe it is, Judge, because if I can't make a turn two-tenths of a mile ahead of the time, and I can make a turn twotenths of a mile after the time, how is that an impact? THE COURT: Because it's going to back

traffic up until they get to the light.

MR. CHEWCASKIE: And you are now making an assumption that is totally not in the record.

THE COURT: I'm not making an assumption. You asked me a question. You said if they have to go two-tenths of a mile further, what's the difference? The difference is, you're backing traffic up two-tenths of a mile because they can't turn there.

MR. CHEWCASKIE: But you're making the assumption that the mere fact that there is a restriction to make a turn on the street automatically backs up traffic.

THE COURT: No. I'm making -- I'm making the factual finding that since you cannot turn off a state highway, you are impacting the state roadway. what I'm saying.

MR. CHEWCASKIE: All right. And I don't

think --

But if you're telling me there's THE COURT:

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no impact, I'll tell you what I'll do. I'll allow them to resolve the factual dispute by taking a deposition of the chief of police. And if they demonstrate that there's an impact on a state roadway, the town can reimburse them for the cost in resolving what you say is a material factual dispute. How's that?

MR. ESPINOSA: Your Honor, may I address that first?

THE COURT: Yeah. Because I don't -- I mean

MR. ESPINOSA: I understand. Your Honor, in the -- in our brief, -THE COURT: Yes.

MR. ESPINOSA: -- our original brief and our reply brief, impact on a state highway is defined by the regulation. N.J.A.C. 16:27-2.1, and in support of the DOT's motion for summary judgment, we included a certification of a traffic engineer, Mark Heeston. (phonetic) Mark Heeston, in accordance with the regulation --

THE COURT: They're saying they don't have that.

MR. CHEWCASKIE: We don't have that.

MR. ESPINOSA: They have that. That was part of our original motion.

this, Your Honor.
THE COURT: Go ahead.

MR. ESPINOSA: It's on eCourts. It was filed properly with our original motion for summary judgment.

THE COURT: Well, just tell me where the certification is because --

MR. CHEWCASKIE: We don't have that.

MR. ESPINOSA: And if I may just address

MR. ESPINOSA: It was with our original motion for summary judgment, Your Honor.

THE COURT: Do you know what exhibit it is?
MR. ESPINOSA: Well, it's a separate
certification of Mark Heeston.

MR. CHEWCASKIE: Unfortunately, we don't have that, Your Honor.

THE COURT: I don't know if I have that either. I have not seen it.

MR. ESPINOSA: Your Honor, I know it was filed on eCourts.

MS. ROSA: If Your Honor would allow me, I have eCourts on my phone. I can look it up right now.

THE COURT: Yeah. I did not see that,

Counsel.

MR. ESPINOSA: Well, in fact -- MR. CHEWCASKIE: And neither did we.

that.

THE COURT: Okay.

MR. ESPINOSA: For two different reasons as articulated by Mr. Heeston, the traffic engineer at the DOT, in accordance with the applicable regulation, as a matter of law, there's an impact on a state highway. In fact, in response to our statement of material facts, Leonia failed to dispute that fact in accordance with the applicable court rule. There is no certification.

MR. ESPINOSA: Your Honor, I can address

MR. CHEWCASKIE: We don't have the certification, Judge.

MR. ESPINOSA: Counsel --

THE COURT: Wait, wait, wait. That's not what he's saying, Counsel. What he's saying is, he set forth in his material facts that it does impact the state roadway, and you did not deny that.

MR. ESPINOSA: In fact, in their response, they failed to specifically dispute these facts by citation conforming with the requirements of Rule 446:2-A and B. And the statements of counsel, the hearsay statements of counsel, are not appropriate in this context. They have not appropriately refuted these facts.

One other thing, Your Honor, just very briefly, Leonia, in response to our statement of material facts, also admitted that Leonia did not submit the ordinances to the DOT commissioner for approval. So, that's also admitted.

THE COURT: I have to tell you in candidness, I don't recall seeing this certification.

MR. CHEWCASKIE: And, unfortunately, Judge, neither did we, so now we're put at a disadvantage because I have a certification that I never had the opportunity to respond to.

MS. ROSA: Judge --

MS. KUMAR-THOMPSON: And they're saying that we didn't --

THE COURT: One at a time. Go ahead.

MS. ROSA: If I may, regardless of whether
the certification is there, I -- obviously as an
officer of the court, Mr. Espinosa is saying he filed
it, he filed it. I don't even think we need that. I'm
a plaintiff in this case. Out of all the counsel that
are sitting here, I'm the only person that drives that
roadway every single day. I think out of everybody in
this courtroom I'm the only person that goes that way
every day. So, I know personally --

MS. KUMAR-THOMPSON: I disagree.

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MR. CHEWCASKIE: We all disagree.

MS. ROSA: If you would. If you would. THE COURT: All right. One at a time.

MS. ROSA: I allowed you guys.

THE COURT: Go ahead.

MS. ROSA: I know personally that you cannot get off of the highway and use Leonia's side roads. know that because I try to do it every day. There's a sign there that tells me I can't go through. I can't go through, and I can't come back. So, the fact that counsel says it has no impact and you could only -- you can turn on a light, but you can't turn on a non-light, it's ridiculous. Because if you can't use that last exit in Leonia, you then have to go to the bridge, which is Lemoyne Ave. And the traffic from Lemoyne Ave. is backed up all the way past Leonia.

So, the options of any person that commutes is go to New York City bridge or don't get off at Leonia. It's as basic as that. So, even if Mr. Espinosa's certification isn't here, which I'm sure he

can produce, it's just common sense. That's all it is. MR. ESPINOSA: Your Honor, if I may, I have a time-stamped copy of the certification filed with eCourts.

> THE COURT: Okay.

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don't have it. It wasn't part of the original submission with eCourts. THE COURT: Let me -- let me just try to clarify for the record. It has a time stamp on eCourts?

MR. ESPINOSA: Yes, Your Honor. May --The officer will bring it. THE COURT: Yes. Thank you. MR. ESPINOSA:

MR. CHEWCASKIE: Judge, unfortunately, we

THE COURT: It is time-stamped in eCourts, July 11th. Okay. It's funny because we don't have it in our system either, but it is -- you do definitely have an eCourts stamp on top.

MR. CHEWCASKIE: Judge, I'm looking for what we downloaded from eCourts, and I don't have a certification.

MR. ESPINOSA: Your Honor, I even sent an email copy as a courtesy copy to counsel.

MS. ROSA: Yeah. Judge, I actually have that as well. That was sent on July 11th at 7:41 p.m. to myself and opposing counsel, a courtesy copy.

MR. ESPINOSA: So, not only did I file it on, Your Honor --

THE COURT: It was filed at 7:24.

MR. ESPINOSA: I also sent a courtesy copy to

counsel. And they actually -- our statement of material facts was based on this, and they responded to our statement of material facts, which are based on Mr. Heeston's certification, Your Honor. And it's undisputed factually, they -- Leonia did not submit the ordinance to DOT for approval.

THE COURT: Okay. You can look at that. Okay. All right. It does appear that the facts set forth in the certification are not disputed and that is that on any roadway where there's no traffic control system, you cannot turn off of the state road.

MR. CHEWCASKIE: Well, Judge, I would like to see the certification. But, you made the suggestion that you wanted --

THE COURT: I'm telling you what I'll do.

Now that I've seen the certification --

Let him see the certification, Counsel.

MR. CHEWCASKIE: And the other -- the other aspect, Judge, well, I may want the certification reviewed by my experts, Judge.

THE COURT: It's not an expert. I don't need an expert certification. If he's right --

MR. CHEWCASKIE: Well, he's a traffic

engineer. Maybe my traffic engineer --

THE COURT: If he's right that you can't turn

off the road on all of those streets, I don't need an expert.

MR. ESPINOSA: Your Honor, it addresses the applicable regulation.

THE COURT: Yes.

MR. ESPINOSA: And there's a, b and c of the regulation for two of those subsets, it addresses those factually. So, that's functionally and factually undisputed in accordance with the rules of court.

MR. CHEWCASKIE: Well, there's a false statement in this certification, Judge.

THE COURT: Which is?

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

MR. ESPINOSA: Your Honor, he -- Counsel is referring to the -- after the fact.

THE COURT: After the fact.

MR. CHEWCASKIE: No, no. This is what -THE COURT: I'm not -- I'm asking you to look
at the streets that he says you cannot turn off of a
state roadway on. Is that accurate? That's all I want
to know. This is fact, not expert.

MR. CHEWCASKIE: Judge --

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whether it violates the statute. that is, I don't know until I look at my map. may have been signs removed.

MR. CHEWCASKIE: And the -- and the answer to Paragraph 11, he lists, like, about 15 streets. There may not have. I

don't know if that's accurate. I'm not asking if the signs have THE COURT: been removed or not. It's the ordinance I care about.

THE COURT: I'll make the determination

MR. CHEWCASKIE: Has the ordinance been amended? The answer is no. But have signs been removed and not enforced on certain streets? answer is yes. As a matter of fact, the ordinance has not been enforced.

THE COURT: Okay.

MR. ESPINOSA: Your Honor, --

MR. CHEWCASKIE: I mean, I can't say why we did not receive this, but we didn't receive it.

THE COURT: All right.

MR. CHEWCASKIE: And the suggestion that you made about taking the deposition of the police chief, maybe all that -- the suggestion that I would make is that maybe the DOT commissioner should send us a letter within 30 days setting forth the reasons whether the ordinance is approved or not.

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THE COURT: No.

MR. CHEWCASKIE: Instead of doing this.

THE COURT: Instead of doing what? I have an application --

> MR. CHEWCASKIE: I understand.

THE COURT: -- that says your ordinance is That's what's in front of me. I'm not here to tell people what they should do and how they should settle cases and who should do what. It's a simple question before me. Is the ordinance valid or invalid? That's all I'm here to decide. I'm not Solomon. I'm not the governor. I'm not the commissioner. I'm not the mayor. The simple question is, is the ordinance That's what's before me today.

MR. CHEWCASKIE: And if DOT commissioner approval is required, then the DOT commissioner needs to act and set forth the reasons why.

THE COURT: Well, maybe the DOT commissioner needs an application with the actual ordinance and then maybe you'll get a decision. But I don't know the answer to that, and quite frankly, for the record, it's irrelevant. The motion before me is simple. Is it a valid ordinance or not? That's what's before me.

MR. CHEWCASKIE: Because then we're back here, Judge, in 30 days.

THE COURT: I don't know the answer to that. And hopefully Ms. Rosa won't be in the case and you won't be back here because the only reason you're in Hudson County is because of Ms. Rosa.

No offense.

MS. ROSA: None taken.

MR. CHEWCASKIE: There's no other place I'd rather be, Judge.

THE COURT: All right. Let's talk about your motion as to Ms. Rosa. It appears counsel and Ms. Rosa -- I'll refer to Ms. Rosa instead of counsel so it's not confusing, even though you are counsel. Or I'll refer as Counsel Rosa.

Counsel, it appears that in your amended complaint, you have two counts dealing with constitutional issues. Count 6 is the constitutional right to travel, a Fifth Amendment violation. Count 7, an ICC clause violation. Given what we received in terms of the cross-motion in opposition, how does this Court make a determination now on a summary judgment motion, giving all benefits of factual disputes to the municipality? How can I, on a summary judgment level, find that they have violated the Fifth Amendment and the ICC clause based upon the certifications and the opposition that's been submitted?

MS. ROSA: Well, Your Honor, I think one goes with the other. If Your Honor finds that the ordinance is invalid, then obviously, Leonia has delayed in taking down their signs for months now since the DOT and the AG came out and said this ordinance is invalid. It needs to come down.

So, in that respect every day that I cannot travel on a public roadway, my constitutional right is violated. It's in my brief and it says, and I'll just read it very briefly:

"The constitutional right to travel from one state to another and necessarily use the highways of interstate commerce occupies a position fundamental to the concept of our federal union. It is a right that has been firmly established and repeatedly recognized."

It is a basic right to be able to travel freely. When you block a public roadway and say only residents that live here can use the roadway, and then you turn around and say, well, not only residents, but if you are doing business in our town --

THE COURT: At certain times of the day.

MS. ROSA: -- at certain times of the day,
then you can use our roadway. So, if Your Honor finds
that the ordinance is invalid, then I'm asking the
Court to also find that they went above and beyond to

keep the ordinance in play when they should have taken it down. They basically are doing something that they know they can't win, and by doing that every day that goes by that they keep those signs up, they continue to purposely violate my right to travel.

THE COURT: Well, when we were here last time, I believe counsel indicated that they were not enforcing the ordinance, they were not issuing summonses, and in terms of your claims, you know, especially in the punitive damage aspect of it, even the cases you cite, which you put the language in, is that the official's conduct is malicious, intentional, recklessly, or callously indifferent to the protected I think based on what has been submitted by rights. the certifications of the police chief and the mayor as well as the legal arguments concerning construction of the statute, while I may have a disagreement with counsel, I don't know how that rises on a summary judgment level for me to make that determination.

MS. ROSA: Well, Judge, I want to address the first thing you said, was -- which was, well, they're not enforcing it. Well, why aren't they enforcing it? Do they believe that it's a valid ordinance or not?

THE COURT: I thought --

MS. ROSA: If they're not enforcing it and

they're saying, well, we put these signs up but we're not giving anyone tickets, so are you just using it as a scare tactic? Do you not really believe in your own ordinance? And if that is the case, then that is reckless.

THE COURT: Well, but that's a factual discovery dispute. I was under the impression that they made that statement during the application for a preliminary injunction saying we are not enforcing anything, we are not issuing summons, and --

MS. ROSA: Counsel cited again --

THE COURT: -- we are awaiting the decision of the Court. That's what I thought was said.

MS. ROSA: Counsel cited -- he cited again today. In the long speech he gave, he said it again.

THE COURT: Right, but what I'm saying is that becomes a factual dispute. I don't know why they didn't take the signs down or why -- they're waiting for a decision of the Court perhaps. I don't know. I'm just saying at a summary judgment standard, am I in a position to say there's no material factual disputes that would lead me to say there's definitely a constitutional deprivation that requires the award of punitive damages.

I don't think because I find the statute

invalid, if I do find the ordinance invalid because of a New Jersey statutory requirement that they obtain the approval of the commissioner, would automatically equate to a constitutional deprivation. Especially in light of the case involving Virginia where the Supreme Court overruled the State of Virginia and said residents and non-residency is not a suspect classification and that there could be an occasion when restrictions are placed on non-residents that would meet the police power of the municipality. I don't know the answers to all of those, at least at this juncture, for either side to get summary judgment on the constitutional issue.

I'm in a position to make a decision as to the statutory violation, but that's not the type of statutory violation that I think -- and I haven't seen a case that says that that automatically rises to a level of the deprivation of your constitutional rights. That's a difficulty I have with the motion regarding constitutional deprivation and punitive damages.

MS. ROSA: I understand, Your Honor. My arguments have been laid out in the papers.

THE COURT: Okay. All right.

MS. KUMAR-THOMPSON: Your Honor, if I believe we have a cross motion to dismiss.

THE COURT: Sure. Go ahead.

MS. KUMAR-THOMPSON: First of all, Your Honor pointed out something interesting and we also pointed it out in the footnote. The Fifth Amendment doesn't apply to local government. It only applies to state government, and therefore, insofar as there is a claim for a deprivation of constitutional rights, under the Fifth Amendment, that claim fails as a matter of law.

In addition, the interstate commerce clause claim also fails because there has been no facts set forth in the complaint that there has been any impact to interstate commerce.

In addition, there are several other reasons why Ms. Rosa's complaint fails to state a claim for constitutional deprivation of rights. We all know that time, manner, place restrictions on constitutional rights are appropriate to be placed on any constitutional right. Just like the First Amendment, we have a First Amendment right but we cannot scream fire in a crowded movie theater.

There is no violation -- and you're correct, Your Honor, there's no violation of constitutional rights based on a claim that it violates a state statute. Section 1983 is a vehicle to remedy federal constitutional rights and not state law violations if

Your Honor finds that.

 THE COURT: But let me just ask you this. One of the -- one of the aspects that was discussed earlier, or one of the concerns that I'll raise is we have this yellow tag situation. If you have a yellow tag, you're not going to be stopped. Okay?

While I was told that no summonses were issued, what I don't have is that no one without a yellow tag wasn't stopped. And I have a problem that you can just stop someone and ask them where they're going. That's what I haven't heard. I have heard that there were no summonses issued. I have heard that signs were taken -- some signs were taken down. What I don't have in front of me -- and this is what I said. I don't have a factual record for the constitutional deprivation argument -- is whether or not any drivers were stopped and questioned because they did not have a yellow tag.

MS. KUMAR-THOMPSON: Your Honor, also, Section 1983 claims are not to be brought for the abstract violation of a constitutional right. So long as Ms. Rosa has never claimed that she's ever been stopped because she did not have a yellow tag, she cannot bring a Section 1983 claim.

MR. CHEWCASKIE: Judge, and perhaps I can

answer your question. The original letter from the Attorney General's Office I believe was March 6th. And it was attached to Chief Rowe's certification. There was a direction from the Attorney General not to enforce the ordinance. As indicated in Chief Rowe's certification, it has not been enforced.

I can't affirmatively state today has anyone been stopped, but my belief is no one has been stopped. The ordinance is not being enforced. I don't believe any officers are stopping any individual on any local roadway requesting where they are -- where they are going, but I cannot affirmatively state that today.

THE COURT: Let me -- let me ask this question, and then I'll give you an opportunity.
MS. ROSA: Thank you, Judge.

THE COURT: Let me ask this question. That was all in March. When did the ordinance take effect?

MR. CHEWCASKIE: The ordinance took effect in January, Judge.

THE COURT: Okay. So, from January to March, plaintiff asserts she didn't turn down any of the streets, didn't avail herself of any other way because of the potential that she would be issued a summons or be questioned. Isn't that part of her allegations? Maybe she hasn't specified that, but...

MR. CHEWCASKIE: That may be part of the allegations in the complaint. But again, Judge, we don't have a certification or anything else.

THE COURT: No. Well, that --

MR. CHEWCASKIE: And, you know, that may be merits on discovery, but I won't say that there was an education program that was commenced by the police department after the ordinance was enacted. But since it was enacted, it's -- no summonses have ever been issued.

THE COURT: Okay.

MR. CHEWCASKIE: Even prior to ==

THE COURT: No, no.

MR. CHEWCASKIE: -- and the Attorney General

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THE COURT: But again -- and I appreciate that and I understand that, but remember, even though no summonses were issued, as I said, if you have a litigant who says, this is what the sign said, I'm not going to take a chance and turn down there, how is that -- again, I don't know, because you're right, I don't have factual certifications on that issue. I'm just saying out loud why I don't think I'm going to make a decision today either way on the constitutional argument.

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But you did -- you know, you've put your statement on the record. Counsel put her statement on the record.

MS. ROSA: Judge, I just want to quickly just address those two things.

THE COURT: Yeah.

MS. ROSA: The first, Ms. Kumar said, well, because I didn't get -- I haven't been stopped for not having a yellow tag, I don't have a right to make that That's like saying, well, you never got a complaint. speeding ticket because you didn't speed. Well, I know not to speed so that's why I didn't get a speeding ticket. I know for a fact those first few days after the ordinance was put in place, there was a line of traffic being stopped and being asked, where are you going? People with children in their cars dropping them to school who live in a different district were Why would I then choose to go there, be being stopped. stopped and questioned on my way to work?

THE COURT: I agree with that. I'm just saying that that's one of the disputes here. I don't have a factual record for the constitutional claims. That's all. I'm not ruling in anybody's favor today on the constitutional claims. I think that's what I'm trying to establish. That I think I need a better

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factual record on if the parties wish to pursue the constitutional claim after I make my decision on the Deputy Attorney General's application.

But I don't think at this juncture, I'm in a position -- I don't think it's ripe for summary judgment.

MS. KUMAR-THOMPSON: Your Honor?

THE COURT: Yes.

MS. KUMAR-THOMPSON: Can I just make one

point?

THE COURT: Sure.

MS. KUMAR-THOMPSON: However, this is a substantive due process claim, not a free speech claim. It's only free speech claims in which a plaintiff is entitled to assert this chilling effect, not on the substantive due process claim. And that's just the last thing that I did want to point out. There is distinction between those two constitutional rights and whether or not you can bring a Section 1983 claim based on the right to travel, just based on the fact that you've been chilled in your right to travel.

THE COURT: All right. Anything else that counsel wants to put on the record?

MS. ROSA: No, Judge.

MR. ESPINOSA: No, Your Honor. Thank you.

MR. CHEWCASKIE: Judge, just briefly. And I think we addressed this when you were asking your questions. I think you have to look at the interrelationship of the statute. There is nothing in the statute that precludes the adoption of a traffic ordinance.

THE COURT: Agreed.

MR. CHEWCASKIE: Okay. Then you go to the next step. What does the traffic ordinance cover? I will submit to Your Honor that, certainly, this ordinance covers not -- I should say, covers local streets, but it also covers local streets within close proximity of Route 93. I agree with Mr. Espinosa in that regard.

Those controlled intersections, any signage was, in fact, removed. I think when we were at the preliminary injunction, I recall that that occurred, because that's something we said we would do. We didn't want to have that impact on those controlled intersections on Route 93.

But there are a number of streets as you go further east from Route 93 which would not meet the regulatory definition of impact. And I look at this very simply. It basically says, you cannot enforce an ordinance in Section 8 of the statute if you need the

commissioner's permission and until you get the commissioner's permission. So, the ordinance is adopted, but the commissioner hasn't done anything.

And there's nothing that I see in the various responses that we had, and again, not seeing the certification but looking at what was said, you know, the traffic engineer for the DOT says, well, we haven't heard anything since May 8th. That's not accurate. May 10th, there's a comprehensive response. We're now here approximately four months later, and there still is no response.

You know, when we were here, we expected, okay, we have a response. We'll deal with it and everything else. It's outside the Court's purview. As you said, it could be a settlement or whatever. Absolute silence as it's determined here.

I mean, the way that we would expect it to work, and I think the Court would expect it to work is that the agency that is supposed to have the expertise would respond. They don't want to respond. I don't know why, but they don't want to respond. You suggested that perhaps we have to bring a separate action. I would rather for them to respond, but in this case, the decision, if the Court says you needed the commissioner's approval to put up those signs along

Route 93 on those local roadways, then it's a limited decision and what's the remedy?

The remedy is exactly what is occurring today: is that the ordinance is not enforced. And that's what the Attorney General suggested on March 6th, and since enaction of the ordinance, it hasn't been enforced. That's what the plain statutory language says. It says — it doesn't say you can't adopt an ordinance. It says, if you adopt an ordinance and it has this impact, which we disagree, but if it has this impact, you need to get the commissioner's approval.

And the ordinance is not to be enforced until you get that approval. Okay. I have the ordinance. The Attorney General may disagree and you may disagree, but the answer is, the remedy is, don't enforce it. It doesn't say, you can't do this. It says, you can't enforce it. That's right in Section 8A. So, that's why I'm trying to say very simply if that's the case and you disagree with my opinion, then those streets that adjoin Route 93 that meet the definition that was set forth in -- I hope I say his name right -- Mr. Heeston's certification, those are the streets where he says there's impact, but not the other streets. And, therefore, we won't enforce the ordinance on those

streets if you determine I need the commissioner's approval. And the adopted ordinance is just that, it sits there until the commissioner takes an action. That's our point, Judge. Although I disagree that I need the commissioner's approval to deal with solely local traffic concerns, if the sole issue now is that you have signs along Route 93, fine. We're not enforcing. The commissioner could act. If they want me to send something out, we'll send something out, and the commissioner could act.

What's interesting is that the statute doesn't say when the commissioner should act. The commissioner has been aware of this since March of 2018, and we have dead silence.

THE COURT: I don't think that's fair to say since March you had dead silence. There were meetings and there was a letter --

MR. CHEWCASKIE: You're right, you're right.

So, I'll give you another --

THE COURT: I understand your frustration, but let's be a little -- let's make the record somewhat accurate.

MR. CHEWCASKIE: I'll give you -- I'll give you, it was dead silence since May 10th.

THE COURT: No. You got a motion.

MR. CHEWCASKIE: Yes, I did.

THE COURT: We got a motion, I should say.

MR. CHEWCASKIE: But in any event, I think
that's what you have to do. You have to look at the
statute. What does the statute say?

THE COURT: Okay.

MR. CHEWCASKIE: I mean, you know, we're dealing with form over substance now, because if the procedure is to say, okay, Mr. Chewcaskie, don't enforce your ordinance, send it to the commissioner, the commissioner will act and set forth her reasons as to the validity of that ordinance. And then the commissioner has a duty because it talks about undue impact. So it defines it even further since it's not just an impact. I think the process if -- you know, and I'll agree with Mr. Espinosa.

The process is, if there's an impact, you go through this, but the commissioner then has to make certain determinations, and it has to be more than just the regulatory definition of impact.

THE COURT: Let me ask you this question since we're talking about 8A. There's also a provision that says 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 or county shall provide appropriate notice to the adjoining municipality or county.

What notice was provided?

MR. CHEWCASKIE: Chief Rowe took care of the notice. He was acting as the administrator at that time. He met with all the adjoining police chiefs as set forth in the certification. And Judge, before we even get there, impact on a surrounding community; there isn't any.

THE COURT: No. It says any impact on

roadways.

MR. CHEWCASKIE: Right.

THE COURT: There isn't any?

MR. CHEWCASKIE: No. Fort Lee Road, Broad Avenue, Grand Avenue, where you traverse between the various communities, are unrestricted. No community, when I looked -- and I'm looking around the courtroom. I don't see Teaneck, Fort Lee, Englewood, or Palisades Park here. Those are the adjoining communities. In fact, as set forth by Police Chief Rowe, the traffic has improved in Fort Lee as a result of this.

So, until there is some evidence that there is impact on the surrounding communities, to me, the notice issue is moot. But even if that was the case,

certainly notice was provided by Chief Rowe in his dual capacities at that time by meeting with the various police chiefs of every community as set forth in his certification. It's not disputed.

THE COURT: Okay.

MR. CHEWCASKIE: Thank you, Your Honor.

That's all I have.

THE COURT: So, the relief that's being requested is that the ordinance be legally invalid because there was not approval by the commissioner, and that they're enjoined and restrained from enforcement of the ordinances. That's the relief that's being requested. I'm reading the order. Is that correct?

MR. ESPINOSA: Yes, Your Honor.

THE COURT: Okay. All right. As I said, the matter has been extensively briefed --

MS. ROSA: Judge, I just want to include that my order was a supplement to Mr. Espinosa's order.

THE COURT: Yes.

MS. ROSA: And it does say on my order that Leonia should take down the signs and issue a notice to the community. Basically the opposite of what they did the first time, which was tell everyone you can't use the streets. Now they should take down the signs and tell everyone -- if Your Honor finds that it is an

invalid ordinance, there should be a release saying to all the surrounding towns and communities that the streets are reopened.

THE COURT: Why would I order them to do that? If I order them to take the signs down, doesn't that tell people that they can turn on the street?

MS. ROSA: Well, I think in the beginning of this, they also -- the reason why people are not using those streets in addition to there being signs now and in their original brief was because of Waze and Google Maps and they actually went to Waze and had Waze put up blocks on Waze so that people traveling cannot use those roads. If they look on their phone, it'll be a big red block that says don't use these.

So, there has to be the inverse of that to know that -- if someone is not watching the news or listening to this oral argument or following eCourts, they're not going to know if I'm on Route 4 I can turn back off the street without getting a ticket. There has to be some sort of public notice.

MR. CHEWCASKIE: And, Judge, we're going outside the record again. What the statute says is the remedy is that the ordinance is not enforced. It doesn't say anything about taking down the signs. It doesn't say anything about --

THE COURT: Well, the remedy being requested is to take down the signs, because --

MR. CHEWCASKIE: Right. But there's no statutory authority for that, Judge.

THE COURT: Well, I just think it would be common sense if I'm inclined to invalidate an ordinance, I'm not going to leave the signs up. That's giving contrary notice to the public.

MR. CHEWCASKIE: And Judge, I may do a new ordinance tomorrow and send it to the DOT, which would permit me to do so.

THE COURT: Well, you may, but that has nothing to do with the ruling that I'm going to make whether it's valid or invalid. If the ordinance is invalid, the signs have to come down.

The other issue in terms of what notice has to be given, I don't -- I'm not aware of what was done by the Borough. So, anything that was done by the Borough to enforce the ordinance is going to have to be undone if I declare an ordinance invalid. I'll make it that general. I don't know what was done.

MR. CHEWCASKIE: But I don't know what that means, Judge.

THE COURT: Well, anything that the Borough did to enforce the ordinance needs to be undone. I

don't know what they did. I don't know what they told Waze or Google Maps. If they blocked off a road because of the ordinance, they have to unblock the road if I declare the ordinance invalid. I mean, let's not get too crazy here. This is common sense.

Let's make a silly example. If I decriminalize marijuana possession, you don't get

decriminalize marijuana possession, you don't get arrested for marijuana possession. I don't get to arrest somebody and wait and see if they know whether it's a crime or not. This is not -- let's be fair here.

MR. CHEWCASKIE: And I am being fair, Judge, because as I said, there were no summonses that have or will be issued.

THE COURT: I know, but Counsel, let's talk about that. I decide to put signs up on all my streets that say do not enter unless you live in Jersey City. I don't -- you know, my ordinance is declared invalid, or I don't have an ordinance. You don't think someone can challenge that, that I put those signs up telling them you can't come down the street unless you live in Jersey City?

MR. CHEWCASKIE: Certainly they can, Judge. THE COURT: And that's what they're doing

here.

MR. CHEWCASKIE: And that's...

THE COURT: That's what both parties are

doing.

MS. KUMAR-THOMPSON: Your Honor, if I may, Ms. Rosa, I believe her application for some type of mandamus action on behalf of the Borough of Leonia is improper, because that action is not pertaining to her. She doesn't represent the people of the State of New Jersey and she certainly doesn't represent the public. And I do believe that in Cedar Grove it says that she cannot ask for such relief, that citizens of the State of New Jersey cannot ask municipalities to do certain things with their traffic organizations in an action in lieu of prerogative writs.

So, just technically speaking, perhaps if that was a remedy that the AG had asked for, we wouldn't be so opposed to it, but in this case, it's not being asked by the Attorney General. It is being asked by Ms. Rosa.

THE COURT: You're saying that Ms. Rosa has no standing to file a prerogative writ action that this ordinance has an impact on her?

MS. KUMAR-THOMPSON: I do -- yes, because she hasn't proven that it's been enacted by undue bad faith, undue influence, or was arbitrary or irrational

at this point in time. So, her requested relief should not be granted.

THE COURT: Okay. Anything else?

MS. ROSA: No, Judge.

MR. CHEWCASKIE: Nothing further, Judge.
THE COURT: Okay. All right. As I said,
this application has been brought before the Court
initially by an application by Jacqueline Rosa and then
joined by the State of New Jersey, Department of
Transportation. This involves ordinances passed by the
Borough of Leonia regarding restricting traffic on
their roadways during certain hours of the day,
differentiating between resident and non-resident
drivers. And also, amended regarding whether or not
the driver is going to or coming from a Leonia
destination.

Two actions have been filed. As I said, the initial one by Jacqueline Rosa in which she asserts claims regarding the validity of the ordinance as well as constitutional claims under count 6 and 7.

The State of New Jersey has filed — they are intervened and their position has been that the ordinance is invalid because it violates N.J.S.A. 39:4-8, principally paragraph (a) subparagraph (3) indicating:

"Notwithstanding any other provision of this section to the contrary, any municipal or county ordinance, resolution or regulation which places any impact on a state roadway shall require the approval of the commissioner."

And in their papers as well as in our colloquy, highlighting the terms "notwithstanding any other provision of this section to the contrary," and "shall require the approval of the commissioner."

The Borough of Leonia takes the position that that has to be read in conjunction with other statutes under Title 39, and primarily, the Borough of Leonia relies on N.J.S.A. 39:4-197(e). And 197 talks about what ordinances or resolutions that municipalities may pass without the approval of the commissioner and consistent with the current standards prescribed by the Manual on Uniform Traffic Control Devices for Streets and Highways.

Paragraph (e) states:

"Regulating the passage or stopping of traffic at certain congested street corners or other designated points, including the establishment of multi-way stop controls."

There are other aspects referred to in the briefs and moving papers, and as I said, many items

have been extensively briefed by counsel and are certainly part of the record, but in terms of the Court's decision today, the Court does not find them relevant and is not going to repeat all of the arguments that are set forth in the briefs, but certainly, they are part of the record, and the Court acknowledges that; that they address several issues.

The Court's decision today will be limited to whether or not Leonia, in their ordinance, has violated the provisions of N.J.S.A. 39:4-8A. Initially, there's an objection to the State proceeding by way of a declaratory judgment action or prerogative writ. We questioned counsel on that, and counsel feels that the -- neither the prerogative writ rule or the declaratory judgment action allows the State to proceed in the manner that it is proceeding.

The Court agrees with the reply by the Attorney General that in Abbott v. Beth Israel, 13 N.J. 528, 541, as well as the New Jersey Turnpike Authority v. Parsons, 3 N.J. 235, 240, that the DOT has an interest in the validity of the ordinances that exceed Leonia statutory authority, and ignores the DOT statutory authority to review and approve measures concerning regulating a government -- governing traffic or traffic conditions under N.J.S.A. 39:4-8A.

If I were to follow the argument presented by counsel for the Borough, the Department of Transportation would be left powerless as to how to proceed in enforcing their statutory obligation.

Additionally, as I read earlier on the record, even if I was to accept the argument by counsel, the Cedar Grove case, which I read the passage earlier at page 273, talks about that:

"In the interest of individual justice along with the public interest, always bearing in mind that throughout our law we have been sweepingly rejecting procedural frustrations in favor of just and expeditious determinations on the ultimate merits."

So, even if I'm wrong and the Borough of Leonia is right, the Court will exercise its guidance as set forth in Cedar Grove v. Sheridan that I should not allow procedural frustrations to avoid a just and expeditious determination on the ultimate merits. However, the Court disagrees, and it should be noted with Leonia's position, that the Department of Transportation cannot ask for declaratory relief in this matter.

While the Court acknowledges and asserts that the arguments are not frivolous being presented by the Borough in the statutory construction, the Court

respectfully disagrees with their interpretation of the statutes. I believe that under the guidance of the Supreme Court case, and I believe it's the <u>Prospero</u> matter, which is cited by both parties, when I read the statute and the language about notwithstanding any other provision to the contrary, I believe it is clear and unambiguous and that this ordinance, whether in part or whole, requires the approval of the commissioner.

While there are some factual disputes regarding that aspect, they do not rise to the level of a material factual dispute that would negate the Court being able to rule on the summary judgment motion. It is disputed whether or not the ordinance has been submitted to the commissioner for approval. But one thing is not disputed, and that is that approval has not been provided by the commissioner, and that is the basis of the DAG's motion in this case. That's an undisputed material fact.

While the engineer's certification was filed properly, and apparently, was e-mailed, there is -- as counsel for the defendants indicated, they did not see it, but it is also undisputed that there are several roadways that are restricted that do either enter or exit off of the state roadway which is Route 93. So,

the Court can find that there are facts that establish that it impacts a state roadway without saying that we need an expert opinion.

Counsel has indicated that at the controlled intersections, the signage has been taken down, but on the uncontrolled intersections, the signage has not been taken down, so, therefore, there is an impact on a state roadway.

So, for those reasons in regards to the State's application that the ordinance is not valid, the Court agrees and will grant the summary judgment motion filed on behalf of the Department of Transportation.

In regard to Ms. Rosa's motion, Counsel Rosa's motion, an allegation has been made regarding her standing of timing. While the Court did discuss some of the claims, I'm not -- I do not believe that standing is lacking, because I don't see how, based upon counsel's representations, that she's not impacted by this ordinance both in the papers filed with the order to show cause as well as the application here. The bigger crux of Counsel Rosa's application deals with constitutional deprivation as set forth in count 6 and 7.

And I think some of the legal arguments

presented by the Borough of Leonia are accurate. I'm not certain and I'm not stating as a matter of law that there is a constitutional deprivation. What I'm stating is that the summary judgment stage of this litigation as I indicated during colloquy, the Court is not confident enough that there's — that there are no material factual disputes. The Court will acknowledge for the record that the Borough has provided extensive certifications indicating what went in to the decision-making process.

The Court acknowledges that at least based upon my review of those certifications, certainly there is no demonstration that the Borough acted arbitrary or capricious. There's nothing in the certifications to indicate that there was malicious intent at this stage, although as I said, as counsel has also — both counsel have pointed out, more so the Borough, there has been no discovery in the case when these summary judgment motions were filed.

So, based on that aspect of it, if Counsel Rosa decides to proceed with her constitutional claims against the Borough, that's something that would require, I think, additional discovery before this Court is in a position to rule either on the motion for summary judgment or the cross-motion for summary

judgment on constitutional grounds.

As I said earlier when I made the decision at the preliminary injunction stage, based on the Supreme Court case involving the State of Virginia, it is not — they have not made it clear that the distinction between residents and non-residents is a suspect classification. They have allowed states, when it is done within their proper police power — and as I said, based on the certifications from the chief of police and the mayor, there is certainly factual support for the decision made by the public officials what is lacking is the approval of the commissioner.

So, for those reasons, the Court will grant the application for the Attorney General. In terms of Counsel Rosa's motion, I'm going to deny the applications for the constitutional relief. And since I've granted the Department of Transportation's application that the ordinances are invalid, that moots the other requested relief. So, the Court will grant - the order proposed by the Department of Transportation states as follows:

"Traffic ordinances numbered 2017-19, 2018-2, and 2018-5, hereafter collectively referred to as The Ordinance of the Borough of Leonia, are hereby declared to be null and void and legally invalid as a matter of

law."

 And then, "Leonia is hereby enjoined and permanently restrained from the further enforcement of these ordinances including but not limited to the use of signage regarding the ordinances, police officers notifying motorists about the ordinances, and the issuance of traffic citations based on the ordinance."

That's the order that will be entered by the Court with regard to the Attorney General's application. Let me just review. I think in terms of the order submitted by Counsel Rosa --

MS. ROSA: Mine -- Judge, mine basically says exactly what you just said.

THE COURT: Yeah. So, what I'm going to do, however, is I'm going to just say the application for relief under counts 6 and 7 are hereby denied without prejudice.

MS. ROSA: Okay.

THE COURT: Okay? Those are the constitutional claims. And the cross-motions for summary judgment will be denied as to both plaintiffs. The application regarding Counsel Rosa will be denied without prejudice because there may have to -- I think there would have to be some discovery and a further -- if that's going to continue. I don't know whether

Counsel Rosa is going to pursue her constitutional claims or not. But I'm not in a position to rule for either side on that.

There was one issue that was raised in the opposition that I wanted to address. You indicated that 45-day period had passed, and I thought we had discussed this earlier, but --

MR. CHEWCASKIE: Judge, perhaps I can clarify.

THE COURT: Yeah.

MR. CHEWCASKIE: We did. When we were at one of the case management conferences, you asked about whether the time barred defense would be raised. I said since there are constitutional claims, I wouldn't raise the time barred defense, because there was a constitutional claim.

THE COURT: Okay. All right. Okay. MR. CHEWCASKIE: And if I could just be heard

THE COURT: Sure. Absolutely, Counsel.
MR. CHEWCASKIE: Based upon your -- I

apologize. New phone and I don't know how -- I thought I shut the thing off.

THE COURT: That's all right.
MR. CHEWCASKIE: Based upon Your Honor's

briefly.

ruling, you invalidated the whole ordinance and didn't limit it to those that would have the -- what I'll call the impact on the state highway. That being the case, in all likelihood, I'll be introducing new ordinances next week. So, I would ask Your Honor for a stay of the decision either for the reintroduction of ordinances, or alternatively, for appeal. I don't know if you want a formal application for a stay.

MR. ESPINOSA: Your Honor, as Your Honor just ruled, there's no substantial likelihood of success on the merits because the ordinances are legally invalid. Counsel has not indicated what immediate and irreparable harm would occur, and in balancing the equities and the public interest, a denial is appropriate because the alternative would be to leave these legally invalid ordinances on the books potentially to be enforced. So, for those reasons, Your Honor, we respectfully object to this stay request.

MR. CHEWCASKIE: And I think the Court needs a little bit more information with regard to the stay, because the Court is certainly aware of what is happening with 495. That is creating an additional burden on traffic towards the George Washington Bridge. I don't really want to argue it now --

THE COURT: No, but Counsel, I'll address that. Let me -- let me just state, this Court is not unsympathetic to the plight of Leonia. The Court is well aware -- and that's why I put on the record that I have read the certifications of the chief of police and the mayor. But what's before me is a purely legal decision. While I understand and can appreciate and am sympathetic to the plight of the residents of Leonia, there's a reason the statute says what it says, and I understand what's happening to 495, but again, I don't want to make it sound like it's irrelevant.

It's irrelevant to my decision. It's not irrelevant to the people who live in Leonia, and it's certainly not going to be irrelevant to yours truly when I drive into work next week into Jersey City. I understand that. But I can't use that as a basis to grant a stay.

MR. CHEWCASKIE: And I understand, Judge. I just wanted to address the harm issue. You know, because when I read all the papers, there's a distinction between Grand Avenue and everywhere else. So, you know, I could, since you didn't invalidate a portion of the ordinance and invalidated the whole ordinance, --

THE COURT: Well, how do I -- how do I cut

and paste? I don't have those facts in front of me to cut and paste.

MR. CHEWCASKIE: Well, we may have been able to deal with that if we saw that certification, Judge, but that's -- that's -- we've spoken.

THE COURT: But I don't think it's my role to cut and paste on an ordinance like this that says the ordinance requires the approval. It doesn't say part of the ordinance. So, you did it as a whole -- not you personally -- as a whole.

MR. CHEWCASKIE: You can blame me. That's all right.

THE COURT: There's nothing that prevents the Borough from adopting a new ordinance. And if it doesn't impact the state roadway, we're not here. And I don't think the Department of Transportation has ever taken that position. What they're saying is, this is why it's invalid. The ordinance impacts a state roadway. That's the basis of my decision, that I believe Section (a) that I read trumps 197. And you disagree, because you think 197 excludes that paragraph of 4-A. We just have a fundamental disagreement over statutory construction.

MR. CHEWCASKIE: It wouldn't be the first time.

THE COURT: No. And it probably won't be the last time.

MR. CHEWCASKIE: But in any event, Judge, as I indicated, you know, maybe we'll make a formal application for a stay then.

THE COURT: You're certainly entitled to do that. I would hope that what I'm saying kind of tells you --

MR. CHEWCASKIE: I understand.

THE COURT: But you have the absolute right to do that.

MR. CHEWCASKIE: I need to do that if there's going to be an appeal. My expectation is based upon what I've heard from Your Honor, I'll probably have revised ordinances anyway that I will segregate various streets out.

THE COURT: Okay. And one other question, Counsel Rosa. Tell me about this Weehawken case that I'm not familiar with that you reference in your brief; that there were punitive damages awarded.

MS. ROSA: Oh, you have to go back to which one you're talking about.

THE COURT: You told us in your brief -- hold on a minute. I will find it. Of course, I couldn't find anything, and I would assume it would be here.

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72
 1
                  MS. ROSA:
                             Tell me which one you're talking
 2
        about.
 3
                  THE COURT: I think it's in your reply.
 4
                  MS. ROSA: The one that I just did on August
 5
        27th?
 6
                  THE COURT: Let me just see. Let me make
 7
        sure, because I have so much paperwork here. Or maybe
 8
        it's in the original. Let me just see. It might be in
 9
        the -- let me check your original one for punitive
10
                         I think so, too. I have a -- oh.
        damages.
                  Yeah.
11
        There was no cite given. I know I'm not crazy.
12
                  Well, in any event, I guess you're not aware
13
        of the case where the Borough of Weehawken was
14
        penalized.
15
                              I think it's on -- Judge, the
                  LAW CLERK:
16
        (indiscernible - not on microphone) -- on page 6.
17
                  THE COURT:
                             Page 6?
18
                  LAW CLERK:
                             Yeah.
                                     It's before the --
19
        (indiscernible - not on microphone)
20
                  MS. ROSA: Judge, is that from the order to
21
        show cause? Because that's not in my --
22
                  LAW CLERK: No. It's from the brief in
23
        support of summary judgment.
24
                  MS. ROSA: In my brief?
25
                  THE COURT: Page 6?
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73
1
                  LAW CLERK: Yes.
 2
                  MS. ROSA: Oh, I see what you're -- it's not
 3
        a case, Judge.
 4
                  THE COURT: Oh.
 5
                  MS. ROSA: I think the law clerk is confused
 6
 7
                  LAW CLERK: It's right here, Judge.
 8
                  THE COURT: Yeah. Well, you said the town of
 9
        Weehawken attempted to do the same on a smaller scale.
10
                  MS. ROSA: Yes, yes. It's ongoing in current
               It's not a litigation or a case that was cited
11
        life.
12
        in a law book.
13
                  THE COURT:
                             Oh.
14
                  MS. ROSA:
                             It's right after Leonia put up
15
        their ordinance, --
16
                  THE COURT: Oh, okay.
17
                  MS. ROSA: -- Weehawken went -- they said,
18
        okay, well, we're going to take what they did. We're
        going to use their ordinance and their legal support
19
20
        and do the same thing.
21
                  THE COURT: Oh, all right.
                                              Okay.
                                                      I misread
22
              I thought you were telling me that damages were
23
        awarded against Weehawken:
24
                  MS. ROSA: That would have made my life very
25
        easy, Judge.
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74 1 MR. CHEWCASKIE: Weehawken adopted an 2 ordinance, Judge. 3 THE COURT: Okay. 4 MR. CHEWCASKIE: Restricting access to 5 various streets direct to the tunnel. 6 THE COURT: Okay. All right. So, as I said before, I'm going to enter this 7 Now, the problem is going to be whether or not 8 -- if Leonia wishes to appeal, how the Appellate 9 Division is going to interpret the order because the 10 11 case is not over. The intervener's case is technically 12 over, but I don't know whether they will --13 MR. CHEWCASKIE: We will need --THE COURT: But I'll leave --14 MR. CHEWCASKIE: No. We will need a motion 15 for leave to appeal since the entire case has not been 16 17 decided. Okay. Unless Counsel 18 THE COURT: Right. 19 Rosa decides to abandon her constitutional claims. 20 Then she can dismiss that and then you'll have a final judgment. But I need to know that because I'm going to 21 22 have to schedule a case management conference on the 23 constitutional claims in order for discovery because 24 I'd like to get that more -- as expeditiously as possible. I don't think it requires a lot of 25

discovery.

Okay. Off the record, Cat.

(Proceedings concluded.)

* * * * * * * *

76 2 3 4 5 6 7 CERTIFICATION 8 I, Karen English, the assigned transcriber, 9 do hereby certify the foregoing transcript of 10 proceedings on electronic recording dated 8/30/18, 11 electronic recording time from 10:30:12 to 11:56:51, is 12 prepared in full compliance with the current Transcript 13 Format for Judicial Proceedings and is a true and 14 accurate compressed transcript of the proceedings as 15 recorded. 16 17 18 /S/ Karen English #421 19 AOC NUMBER 20 21 22 Karen English Trans. Svc. September 5, 2018 23 AGENCY DATE

DOT EXHIBIT C

HUD-L-000607-18 07/11/2018 7:24:28 PM Pg 1 of 3 Trans ID: LCV20181207094

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,

BOROUGH OF LEONIA, NEW

v.

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 \underline{Rule} 1:6-2(d), the undersigned respectfully requests oral argument.

A proposed form of order is attached.

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HUD-L-000607-18 07/11/2018 7:24:28 PM Pg 3 of 3 Trans ID: LCV20181207094

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

Skilin T Thom

Deputy Attorney General Attorney To No.: 030311988

Dated: July 11, 2018

Case 12018-000-655-34 DOMON 2018 161-26: 05 Hand 120/3 1/162 TRANS 407-2 1.00/20/28 Przysa 129: 897

HUD-L-000607-18 07/11/2018 7:24:28 PM Pg 1 of 2 Trans ID: LCV20181207094

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.

:

HUD-L-000607-18 07/11/2018 7:24:28 PM Pg 2 of 2 Trans ID: LCV20181207094

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		

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HUD-L-000607-18 07/11/2018 7:24:28 PM Pg 1 of 4 Trans ID: LCV20181207094

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.

BOROUGH OF LEONIA, NEW JERSEY,

Defendant.

STATEMENT OF MATERIAL FACTS ON BEHALF OF THE NEW JERSEY

DEPARTMENT OF TRANSPORTATION

- 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, Ridgefield 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.)

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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

Philip J. Espinosa

Deputy Attorney General

(Attorney % No.: 030311988)

Dated: July 11, 2018

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HUD-L-000607-18 07/11/2018 7:24:28 PM Pg 1 of 22 Trans ID: LCV20181207094

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.

STATE OF NEW JERSEY
DEPARTMENT OF TRANSPORTATION

Plaintiff-Intervenor,

v.

BOROUGH OF LEONIA, NEW

JERSEY,

Defendant.

: BRIEF IN SUPPORT OF MOTION FOR

SUMMARY JUDGMENT ON BEHALF OF

THE STATE OF NEW JERSEY

DEPARTMENT OF TRANSPORTATION

I

HUD-L-000607-18 07/11/2018 7:24:28 PM Pg 2 of 22 Trans ID: LCV20181207094

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, Ridgefield Park, Palisades Park, and Teaneck. (DOT Certification of Mark A. Hiestand, page 3, paragraph 7.) A

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-Published news reports and Leonia's neighborhoods.html.) 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-townthat-took-on-waze/558215; see also Leonia Safe Streets, Borough

http://www.leonianj.gov/depts/leonia_safe_streets_information.
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), https://www.wptv.com/news/local-news/water-cooler/leonia-new-jersey-town-wants-residential-streets-removed-going 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), https://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'

signs barring commuters, replace 'Do Not Enter' to (Feb. 2018 10:23 PM), NORTHJERSEY.COM 22, http://www.northjersey.com/story/news/bergen/leonia/2018/02/21/1 eonia-drafts-new-traffic-signage-help-businesses/359675002.) addition, according to published news reports, Leonia later proposed posting amended signs in order to appeal to Leonia's (Leonia To Get Friendlier Signs Banning GWB businesses. 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 PM), 11:31 http://www.northjersey.com/story/news/bergen/leonia/2018/03/05/1 eonia-amends-controversial-road-closures-law-boostbusiness/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 3, 2018). town, state of New Jersey, WABC-TV (May 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 officials on April 4, 2018 to discuss potential traffic control (DOT Certification of Mark A. Hiestand, page 5, options. 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 (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 DELCARED 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 socalled "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 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, <u>Rule</u> 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 <u>Rule</u> 4:69-1. See <u>Selobyt v. Keough-Dwyer Corr. Facility</u>, 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.

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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

Respectfully submitted,

GURBIR S. GREWAL ATTORNEY GENERAL OF NEW JERSEY

ру : *Д___*

hilip J. Espytosa

Deputy Attorney General

(Attørnøy 📝 No.: 030311988)

Dated: July 11, 2018

based on the Ordinances:

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:

Jacqueline Rosa, Esq.
Seigel Law
505 Goffle Road
Ridgewood, NJ 07450
Email: JRosa@SeigelLaw.com
Pro Se

Brian M Chewcaskie Gittleman Muhlstock & Chewcaskie 2200 Fletcher Avenue Fort Lee, NJ 07024 Email: brian@gmcnjlaw.com Attorney for Defendants

> GURBIR S. GREWAL ATTORNEY GENERAL OF NEW JERSEY

Bv:

Milip 7. Espinosa eputy Attorney General

Attorney AD No.: 030311988

Dated: July 11, 2018

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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

ν.

BOROUGH OF LEONIA, ET AL.,

Defendants.

STATE OF NEW JERSEY
DEPARTMENT OF TRANSPORTATION.

Plaintiff-Intervenor,

: CERTIFICATION OF MARK A.
V. 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

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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.
- 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.

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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

SNOINIGO

"Official duties involving the exercise of discretion and judgment for the public weal cannot be delegated. They can be performed only in person." Also, in 43 Am. Inc. Public Officers Section 461, it is said:

This rule has been followed in State v. Howard, 74A 392 (Sup. Ct. Vt. 1909)
State, Donforth, frost. 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) Braderick 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, Nate, 26 Mith. 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

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). the propriety of the act being done. "Discretion may be defined, when applied to public functionaries, as the

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. aby said to include the judgment and discretion, where the legislative intent may be reason aby said to include the judgment and discretion of the public officer, there can be no delegation of the discretion so conferred. Cf. Schwartze v. Conden, 77 N. J. Eq. 135 (Ch. 1910). When it is considered that the claims made under Section While it is manifest that the proper exercise of any delegated ministerial func-

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 moment in his

Very truly yours,

GROYER C. RICHMAN, JR., Attorney General. Assistant Deputy By: CHARLES J. KEROE,

MARCH 4, 1955.

How. 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.

ATTORNEY GENERAL

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

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 "No municipality shall pass an ordinance or resciution on a matter 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
- 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 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: 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

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." "No resolution, ordinance or regulation passed, enacted or established

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. Prenton, 11 N. J. Misc. 836, (Sup. Ct. 1933); Pinnick v. Nework, 14 N. J. Super., 134 (Sup. Ct. 1931); and Terminal Storage, Inc. v. Rartian Totreschip, 15 N. J. Super, 547 (Sup. Ct. 1951) 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.

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

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111

"through or transsent vehicular traffic" on streets in or near the area of New Hyde Park, the ordinance being passed as a result of complaints from residents 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 In the cited case, an ordinance of the Town of North Hempstead prohibited who objected to the volume of traffic at particular hours of the day, mainly because ordinance invalid the Court said,

regulation of the streets is the exercise of a governmental function in that "Political subdivisions and manicipal curporations hold * * * streets ereign except to the extent that the Legislaure delegates power over them for the benefit of the public, consisting of the whele of the people, and they are subject exclusively to regulation and control by the state as a sovto 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 sauction.

Very truly yours,

Сяоуда С. Вісникая, Зя., stiturney General.

By: JAMES T. KIRK, Deputy Attorney General.

JTK/LL

МАВСН 4, 1955.

HONDRABLE WILLIAM F. KELLY, JR. President, Civil Service Commission,

Trenton 7, New Jersey.

FORMAL OPTIMION 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 Patrohnen and Firemen. Your memorandum states that the City of Union City adopted two ordinances in age at 30 for Patrolmen and Fliemen. These age limits coincide with those set by R. S. 40:47-4, as amended. However, prior to its amendament, approved April 24, and the maximum 1925 the effect of which is to establish the minimum age at 21 1945, the statute provided for a thirty-five year maximum age.

N. J. S. A. 38:23A 2, enacted in 1994, provides as follows.

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, heretolore and subsequent to July first, one thousand nine hundred and forty, entered or hereafter, in time of war, shall enter the active military or mayal 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 "When the qualifications for any examination or test for, or appointment or election to any office, position or employment under the government

ATTORNEY GENERAL

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 States to serve with the Army or Navy. suall be deemed to meet 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

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

valid and must be regarded as controlling. The governing holy of each municipality is empowered by R. S. 40:47 I 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 numicipalities must operate in the appointment of police We are of the opinion that the age limits set by the municipal ordinance are 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 appointers; and the municipality may prescribe requirements in addition to, although not in contravention of, those prescribed by statute."

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 restriceipal 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 naximum age requirement in tive than that in effect by state law, the more restrictive provisions of the musti-Your announcement is correct as to insinicipalities which have not set any age effect" within the meaning of N. J. S. A. 38:234-2, supra.

vi One other aspect of your aunouncement requires attention. The statute R. 25 semended, 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 Wentself v. Steelman, 8 N. J. Miss. 503 15up. Ct. 1930). Your announcement makes the announced closing date Lauguage should be substituted to the critical time. In this respect it is incurred. Lauguage 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

HUD-L-000607-18 07/11/2018 7:24:28 PM Pg 1 of 5 Trans ID: LCV20181207094

DOT EXHIBIT B

HUD-L-000607-18 07/11/2018 7:24:28 PM Pg 2 of 5 Trans ID: LCV20181207094

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:

Road Name/Direction of Road

Edgewood Road- Southbound from Ridgeland Ter. to Ridgeland

Do Not Enter

Terrace

Broad Avenue – Eastbound from Broad Avenue Vreeland Avenue Woodland Place

Do Not Enter Do Not Enter

Beechwood Place	Do Not Enter
Magnolia Place	Do Not Enter
Eim 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
Q 100 100 100 100 100 100 100 100 100 10	
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
Hatrison ower	
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
H ville direct	
Fort Lee Road - Northbound of Fort Lee Road	
Linden Terrace	Do Not Enter
Hawthorne Terrace	Do Not Enter
Leonia Avenue	Do Not Enter
Leonid Avenue	
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
A ford Angels and Assessment	

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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	
	Do Not Enter
Christie Lane	
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
Glenwood Avenue - Eastbound of Glenwood Avenue	
Hillside Avenue	Do Not Enter
Woodland Place	Do Not Enter
	_ : . :

Do Not Enter

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Allaire Avenue Do Not Enter
Summit Avenue Do Not Enter
Park Avenue Do Not Enter
Highwood Avenue Do Not Enter
Oakdene Avenue 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
No Right and Left Turn
No Right 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.

Judan Zeigled Mayor

Borough Clerk

ATTEST:

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DOT EXHIBIT C

BOROUGH OF LEONIA COUNTY OF BERGEN

2018.2

ſ

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.

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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

Antiocreed: 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.

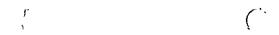
No person shall operate a vehicle on those streets or parts of streets as described in Schedule XVIII (§194-49) attached to and made part of Chapter 194 during the times of the days indicated in said Schedule unless that person

- (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.

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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
Official Value	— • • • • • • • • • • • • • • • • • • •

Broad Avenue - Westbound of Broad Avenue

Oakdene Avenue	Do Not Enter
Moore Avenue	Do Not Enter
Arnes 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

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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	Do Not Enter
Grand Avenue - Westbound of Grand Avenue	
Maple Street Schor Avenue Bergen Boulevard - Westbound of Bergen Boulevard	Do Not Enter Do Not Enter
Christie Lane	Do Not Enter

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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

Glenwood Avenue - Eastbound of Glenwood Avenue

Hillside Avenue Do Not Enter
Woodland Place Do Not Enter
Allaire Avenue Do Not Enter
Summit Avenue Do Not Enter
Park Avenue Do Not Enter
Highwood Avenue Do Not Enter
Oakdene Avenue 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

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.

Case 2:18-cy-15534 Document 1-6 Filed 10/31/18 Page 123 of 192 Page ID: 948 10/03/2018 6:28:09 PM Pg 56 of 62 Trans ID: LCV2018 1728 429

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Section 4. Effect.

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

Judah Zeigler Mayor

ATTEST:

Barbara Rae, RMC, CMC

Borough Clerk

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DOT EXHIBIT E

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State of New Tersey

DEPARTMENT OF TRANSPORTATION P.O. Box 600 Trenton, New Jersey 08625-0600

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER

Lt. Governor

DIANE GUTIERREZ-SCACCETTI Acting Commissioner

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:

- AM and PM peak hour turn prohibitions <u>onto</u> 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.
- 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.
- 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,

Jaime Marie Oplinger, P.E.

Executive Manager, Bureau of Traffic Engineering

Quene Marie Opening

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DOT EXHIBIT F

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PHILIP D. MURPHY

SHEILA Y. OLIVER

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



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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.

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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

Bv:

Kevin R. Jespersen

Chief Counsel to the Attorney General

DOT EXHIBIT D

ORDINANCE NO. 2018-14 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 "RESTRICTED ACCESS TO CERTAIN

STREETS" AND §194-49 SCHEDULE XVIII

WHEREAS, Ordinances No. 2017-19 and 2018-5 were invalidated by the Superior Court of New Jersey; and

WHEREAS, the Mayor and Council have reviewed the determination of the Court and have determined to revise same in order to address the decision rendered by the Superior Court.

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 Restricted Access to 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 Restricted to Traffic.

In accordance with the provisions of §194-25.1, the following streets or parts of streets shall be restricted 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:

Road	Name	/Direction	of Road	
IVUAU	LIGHT	DILCCHOIL	OI IZORU	

Prohibited Entry

Edgewood Road - Southbound from Ridgeland Terrace

Restricted Access -Residents & Leonia Destinations Only

Broad Avenue - Eastbound from Broad Avenue

Vreeland Avenue Restricted Access - Residents & Leonia

Woodland Place Destinations Only
Restricted Access

Residents & Leonia
Destinations Only

Beechwood Place Restricted Access - Residents & Leonia

Destinations Only

Magnolia Place Restricted Access - Residents & Leonia

Residents & Leonia Destinations Only

Elm Place Restricted Access -

Residents & Leonia

Destinations Only
Allaire Avenue Restricted Access

Residents & Leonia

Westview Avenue Destinations Only
Restricted Access -

Restricted Access -Residents & Leonia

Summit Avenue Destinations Only
Restricted Access

Residents & Leonia

Park Avenue Destinations Only
Restricted Access

Residents & Leonia

Highwood Avenue Destinations Only
Restricted Access

Residents & Leonia

Sylvan Avenue Destinations Only
Restricted Access

Residents

& Leonia

Destinations Only Moore Avenue Restricted Access Residents & Leonia **Destinations Only** Oakdene Avenue Restricted Access Residents & Leonia Broad Avenue - Westbound of Broad Avenue **Destinations Only** Oakdene Avenue Restricted Access Residents & Leonia **Destinations Only** Access Moore Avenue Restricted Residents & Leonia Destinations Only Ames Avenue Restricted Access Residents & Leonia **Destinations Only** Sylvan Avenue Restricted Access Residents & Leonia Destinations Only Highwood Avenue Access Restricted Residents & Leonia **Destinations Only** Park Avenue Restricted Access & Leonia Residents Destinations Only Christie Street Restricted Access Residents & Leonia Destinations Only High Street Restricted Access Residents & Leonia Destinations Only Crescent Avenue Restricted Access & Leonia Residents Destinations Only Overlook Avenue Restricted Access Residents & Leonia **Destinations Only** Van Orden Avenue Restricted Access Residents & Leonia **Destinations Only** Vreeland Avenue Restricted Access Residents & Leonia

Christie Heights Street

Harrison Street

Destinations Only
Restricted Access Residents & Leonia
Destinations Only
Restricted Access Residents & Leonia

Destinations Only

Fort Lee Road - Southbound of Fort Lee Road

Leonia Avenue

Gladwin Avenue

Oaktree Place

Paulin Boulevard

Irving Street

Fort Lee Road - Northbound of Fort Lee Road

Linden Terrace

Hawthorne Terrace

Leonia Avenue

Glenwood Avenue - Northbound of Oakdene Avenue

Glenwood Avenue

Glenwood Avenue - Eastbound of Glenwood Avenue

Residents & Leonia
Destinations Only
Restricted Access -

Residents & Leonia Destinations Only

Restricted Access

Restricted Access Residents & Leonia
Destinations Only
Restricted Access Residents & Leonia
Destinations Only
Restricted Access -

Residents & Leonia
Destinations Only

Restricted Access Residents & Leonia
Destinations Only

(

Hillside Avenue	Restricted Access -
	Residents & Leonia
	Destinations Only
Woodland Place	Restricted Access -
	Residents & Leonia
	Destinations Only
Allaire Avenue	Restricted Access -
	Residents & Leonia
	Destinations Only
Summit Avenue	Restricted Access -
	Residents & Leonia
	Destinations Only
Park Avenue	Restricted Access -
	Residents & Leonia
	Destinations Only
Highwood Avenue	Restricted Access -
	Residents & Leonia
	Destinations Only
Oakdene Avenue	Restricted Access -
	Residents & Leonia
	Destinations Only

Intersections with Traffic Control Devices

Broad Ave/Hillside Ave: West and Eastbound from Broad Ave
No Right and Left Turn
Fort Lee Road EB/Glenwood Avenue: North and Southbound No Right and Left Turn
from Fort Lee Road
Fort Lee Road EB/Station Parkway: Southbound from Fort Lee
No Right Turn
Road

Section 2.

All other provisions of Chapter 194 "Vehicles and Traffic" of the Code of the Borough of Leonia including the provisions of Ordinance 2018-15 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.

ATTEST:___

Marc Seemon, Clerk Borough Clerk Judah-Zeigler, Mayof

DOT EXHIBIT E

ORDINANCE NO. 2018-15 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 "RESTRICTED ACCESS TO CERTAIN
STREETS" AND §194-49 SCHEDULE XVIII

WHEREAS, Ordinances No. 2017-19 and 2018-5 were invalidated by the Superior Court of New Jersey; and

WHEREAS, the Mayor and Council have reviewed the determination of the Court and have determined to revise same in order to address the decision rendered by the Superior Court.

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 Restricted Access to 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 Restricted to Traffic.

In accordance with the provisions of §194-25.1, the following streets or parts of streets shall be restricted 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:

Road Name/Direction of Road

Prohibited Entry

Grand Avenue - Eastbound of Grand Avenue

Lakeview Avenue	Restricted Access -
	Residents & Leonia
	Destinations Only
Longview Avenue	Restricted Access -
	Residents & Leonia
	Destinations Only
Overlook Avenue	Restricted Access -
	Residents & Leonia
	Destinations Only
Van Orden Avenue	Restricted Access -
	Residents & Leonia
	Destinations Only
Vreeland Avenue	Restricted Access -
	Residents & Leonia
	Destinations Only
Harrison Street	Restricted Access -
	Residents & Leonia
	Destinations Only
Cottage Place	Restricted Access -
	Residents & Leonia
	Destinations Only
Hillside Avenue	Restricted Access -
	Residents & Leonia
	Destinations Only
Palisade Avenue	Restricted Access
	Residents & Leonia
	Destinations Only
Prospect Street	Restricted Access -
	Residents & Leonia
	Destinations Only
Maple Street	Restricted Access -
•	Residents & Leonia
	Destinations Only
Christie Street	Restricted Access -
	Residents & Leonia
	Destinations Only
Park Avenue	Restricted Access

Residents & Leonia Destinations Only Highwood Avenue Restricted Access Residents & Leonia Destinations Only Sylvan Avenue Restricted Access Residents & Leonia **Destinations Only** Restricted Access Ames Avenue Residents & Leonia **Destinations Only** Restricted Access Oakdene Avenue Residents & Leonia **Destinations Only**

Grand Avenue - Westbound of Grand Avenue

Maple Street

Restricted Access Residents & Leonia
Destinations Only

Bergen Boulevard - Westbound of Bergen Boulevard

Restricted Christie Lane Access Residents & Leonia **Destinations Only** Hazlitt Avenue Restricted Access Residents & Leonia **Destinations Only** Restricted Access Washington Terrace Residents & Leonia Destinations Only Lester Street Restricted Access Residents & Leonia **Destinations Only**

Section 2.

All other provisions of Chapter 194 "Vehicles and Traffic" of the Code of the Borough of Leonia including the provisions of Ordinance No. 2018-14 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 and approval from the Commissioner of the New Jersey Department of Transportation, in accordance with <u>N.J.S.A.</u> 39:4-8.

Judan Zeigler, Mayor

ATTEST:

Marc Seemon, Clerk Borough Clerk

DOT EXHIBIT F

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:

Road Name/Direction of Road

Edgewood Road- Southbound from Ridgeland Ter. to Ridgeland

Terrace

Prohibited Entry
Do Not Enter

Broad Avenue - Eastbound from Broad Avenue

Vreeland Avenue

Voodland Place

Do Not Enter

Do Not Enter

Beechwood Place Magnolia Place Elm Place Allaire Avenue Westview Avenue Summit Avenue Park Avenue Highway Avenue Sylvan Avenue Moore Avenue Oakdene Avenue	Do Not Enter
Broad Avenue — Westbound of Broad Avenue Oakdene Avenue Moore Avenue Ames Avenue Sylvan Avenue Highwood Avenue Park Avenue Christie Street High Street Crescent Avenue Harrison Street Overlook Avenue Van Orden Avenue Vreeland Avenue Christie Heights Street Harrison Street	Do Not Enter
Fort Lee Road – Southbound of Fort Lee Road Leonia Avenue Gladwin Avenue Oaktree Place Paulin Boulevard Irving Street Fort Lee Road – Northbound of Fort Lee Road Linden Terrace Hawthorne Terrace Leonia Avenue Grand Avenue – Eastbound of Grand Avenue Lakeview Avenue	Do Not Enter
Longview Avenue Overlook Avenue Van Orden Avenue	Do Not Enter Do Not Enter 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	
	Do Not Enter
Christie Lane	
Hazlitt Avenue	Do Not Enter
Washington Terrace	Do Not Enter
Lester Street	Do Not Enter
Glenwood Avenue - Northbound of Oakdene Avenue	
	wa az . wa .
Glenwood Avenue	Do Not Enter
Ciarra I Array Parts of CO.	
Glenwood Avenue - Eastbound of Glenwood Avenue	
TTiliaida Assansa	Da Mas Care
Hillside Avenue Woodland Place	Do Not Enter
woodiand riace	Do Not Enter
	Do Not Enter

Allaire Avenue	Do Not Enter
Summit Avenue	Do Not Enter
Park Avenue	Do Not Enter
Highwood Avenue	Do Not Enter
Oakdene Avenue	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

TUTTNO

Borough Clerk

ATTEST:

DOT EXHIBIT G

BOROUGH OF LEONIA COUNTY OF BERGEN

 $20/k^{\circ}$. 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

Axtioliced: 1/3/18 adopted: 1/17/18 approved: 1/17/18

DOT EXHIBIT H

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 Woodland Place Beechwood Place Magnolia Place Elm Place Allaire Avenue Westview Avenue Summit Avenue Park Avenue Highwood Avenue Sylvan Avenue Moore Avenue 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
Vali Oldeli Avente,	

1

Vreeland Avenue	Do Not Enter
Christie Heights Street	Do Not Enter
Harrison Street	Do Not Enter
	D.O. V. i.o.A. wunder
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
Marie Company of the section of the	
Fort Lee Road - Northbound of Fort Lee Road	
Linden Terrace	Do Not Enter
Hawthorne Terrace	Do Not Enter
Leonia Avenue	Do Not Enter
Leona Avenue	DO NOT Differ
Grand Avenue - Eastbound of Grand Avenue	
Change 12 to 120 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	
Lakeview Avenue	Do Not Enter
Longview Avenue	Do Not Enter
Overlook Avenue	Do Not Enter
Van Orden Avenue	Do Not Enter
Vreoland 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	
Manla Street	Do Not Enter
Maple Street	Do Not Enter
Schor Avenue	TACTAN TWENT
Bergen Boulevard - Westbound of Bergen Boulevard	
DOLEAN DAMAINE MANAGEMENT DAMAINE	

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

Glenwood Avenue - Eastbound of Glenwood Avenue

Hillside Avenue	Do Not Enter
Woodland Place	Do Not Enter
Allaire Avenue	Do Not Enter
Summit Avenue	Do Not Enter
Park Avenue	Do Not Enter
Highwood Avenue	Do Not Enter
Oakdene Avenue	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

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 I

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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

MICHELLE L. MILLER

August 24, 2018

Via eCourts and Overnight Delivery

Honorable Peter F. Bariso, Jr., A.J.S.C. Hudson County Administration Building 9th Floor - Chambers 906 595 Newark Avenue Jersey City, New Jersey 07306

Re: Jacqueline Rosa v. Borough of Leonia, et al.

Docket No.: HUD-L-607-18

Motion for Summary Judgment
Return Date: August 31, 2018
Oral Argument Requested

Dear Judge Bariso:

On behalf of the State of New Jersey Department of Transportation (DOT), we respectfully request that Your Honor accept this letter brief, in lieu of a more formal brief, in opposition to the cross-motion to dismiss filed by the Borough of Leonia (Leonia).

PRELIMINARY STATEMENT

Based on an analysis of the plain language of the



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applicable statutes within Title 39, and the language of the ordinances at issue, the ordinances are legally invalid. In addition, Leonia failed to submit the ordinances at issue to the Commissioner of the New Jersey Department of Transportation (DOT) for approval. Further, if municipalities across the State were deemed to have legal authority to adopt no through street ordinances such those at issue, we could reasonably anticipate the potential traffic problems that could ensue, particularly in the more densely populated regions of the State. This is not to be insensitive to the concerns of Leonia. But municipalities across the State, including Leonia, should address traffic concerns within the rule of law. As such, as a matter of law, the DOT's motion for summary judgment should be granted and Leonia's crossmotion to dismiss should be denied.

STATEMENT OF FACTS

The DOT respectfully incorporates by reference the Statement of Facts included in the DOT's brief in support of its motion for summary judgment.

In addition, Leonia has failed, in substance, to refute the DOT's Statement of Material Facts. In this regard, Leonia relies upon the certifications of Thomas Rowe (Mr. Rowe) and Judah Zeigler (Mr. Zeigler). These certifications, overall, provide information leading to Leonia's decision to adopt the ordinances at issue and Leonia's perspective regarding its communications

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with the DOT. However, these certifications do not raise any issues as to any material facts regarding the DOT's motion for summary judgment.

At this point, the following material facts, in substance, remain undisputed:

- 1. Leonia admits that it 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 were filed as DOT Exhibits B, C and D to the DOT's motion for summary judgment). (Leonia's response to the DOT's Statement of Material Facts, page 1, paragraph 1.)
- 2. Leonia does not deny that, 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, filed with the DOT's motion for summary judgment.) (Leonia's Response to the DOT's Statement of Material Facts, page 1, paragraph 2.) However, although Leonia denies that it has prohibited "through" traffic by

the Ordinances, the plain language of the traffic prohibitions included within the Ordinances speak for themselves.

- 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, filed with the DOT's motion for summary judgment.) Leonia objects to this fact as vague since the term "close proximity" is not defined (Leonia's Response to the DOT's Statement of Material Facts, page 2, paragraph 3). However, Leonia admits that it is situated approximately a half mile from the George Washington Bridge (Mr. Rowe's Certification, page 2, paragraph 6). Moreover, the DOT respectfully submits that, pursuant to N.J.R.E. 201(b), by reference to a map, the court can take judicial notice of Leonia's 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.
- 4. Leonia admits that 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, filed with the DOT's motion for summary judgment). (Leonia's Response to the DOT's Statement of Material Facts, page 2, paragraph 4.)

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- Leonia admits that it is adjacent to several other municipalities within Bergen County, including Fort Lee, Englewood, Ridgefield Park, Palisades Park, and Teaneck (DOT Certification of Mark A. Hiestand, page 3, paragraph 7, filed with the DOT's motion for summary judgment). (Leonia's Response to the DOT's Statement of Material Facts, page 2, paragraph 5.)
- 6. Leonia admits that 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). (Leonia's Response to the DOT's Statement of Material Facts, page 2, paragraph 6.)
- 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, filed with the DOT's motion for summary judgment.) Leonia has improperly denied these facts

because Leonia has failed to specifically dispute these facts by citation conforming to the requirements of $R.\ 4:46-2(a)$ and (b).

8. Leonia admits that it did not submit the Ordinances to the DOT Commissioner for approval (DOT Certification of Mark A. Hiestand, page 5, paragraph 12, filed with the DOT's motion for summary judgment). (Leonia's Response to the DOT's Statement of Material Facts, page 2, paragraph 8.)

LEGAL ARGUMENT

POINT I

THE DOT HAS STANDING UNDER THE DECLARATORY JUDGMENT ACT, N.J.S.A. 2A:16-50 TO -62, TO SEEK DECLARATORY RELIEF.

New Jersey's Declaratory Judgment Act, N.J.S.A. 2A:16-50 (the DJA), entitles litigants "whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract or franchise" to have a court determine the validity of those instruments and to declare rights, status, or other legal relations so as to afford the litigants relief from uncertainty and insecurity. See N.J.S.A. 2A:16-50. The DJA "expressly confers standing on a person whose legal rights have been affected by a municipal ordinance," and affords litigants expeditious relief when there is a judiciable controversy. Bell v. Stafford, 110 N.J. 384, 390 (1988) (citations omitted). Moreover, New Jersey's courts have recognized that the DJA should be liberally construed to carry out its intended purpose. Ibid.

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Contrary to Leonia's arguments, New Jersey's courts have addressed the issue of whether the State may maintain suit under the DJA. See, Abbott v. Beth Israel Cemetery Ass'n, 13 N.J. 528, 541 (1953). In Abbott, the New Jersey Supreme Court reasoned that public officials "stand in a fiduciary relationship to the people whom they have been elected or appointed to serve," and the right to resort to the DJA has been afforded to fiduciaries generally. Id. at 541-42 (citations omitted). Moreover, the Court recognized that public officers are entitled to have their legal duties determined judicially by action for declaratory judgment, and that "the state itself and its political subdivisions and bureaus are proper parties plaintiff" in declaratory actions. Id. at 541. The thus held that the State Highway Commissioner, the Court predecessor to the DOT Commissioner, had proper status to maintain an action for declaratory relief under the DJA. See also New Jersey Turnpike Authority v. Parsons, 3 N.J. 235, 240 (1949) (holding that the New Jersey Turnpike Authority could maintain a declaratory action concerning the validity of the New Jersey Turnpike Authority Act, N.J.S.A. 27:23-1 to -60); Unsatisfied Claim & Judgement Fund Board v. Concord Ins. Co., 110 N.J. Super. 191, 196-200 (Law Div. 1970) (finding that the Board had the right to seek declaratory relief); Middlesex County Sewerage Authority v. Middlesex, 74 N.J. Super. 591 (Law Div. 1962) (declaratory judgment action brought by a public sewerage authority against a municipality).

Here, the DOT has an interest in the validity of the Ordinances, which exceed Leonia's statutory authority and ignore the DOT's statutory authority to review and, if appropriate, to approve measures concerning, regulating, or governing traffic or traffic conditions. N.J.S.A. 39:4-8(a). By adopting the Ordinances, Leonia has also ignored the DOT's broad statutory authority to develop and promote efficient transportation services and coordinate its activities with other public agencies and municipalities. N.J.S.A. 27:1A-5. In addition, the Ordinances have an impact on a State highway as defined by N.J.A.C. 16:27-2.1, as discussed more fully in Point IV of this brief. Accordingly, the DOT has standing to maintain this action against Leonia under the DJA as a matter of law.

POINT II

THE DOT IS ENTITLED TO MAINTAIN AN ACTION IN LIEU OF PREROGATIVE WRIT AS A MATTER OF LAW.

Actions in lieu of prerogative writ vest a court with authority "to review the actions of municipal agencies to ensure that such agencies are acting within their jurisdiction and 'according to law.'" Paruszewski v. Twp. of Elsinboro, 154 N.J. 45, 58 (1998) (quoting Wyzykowski v. Rizas, 132 N.J. 509, 522 (1993)). In this regard, when the New Jersey Constitution of 1947 consolidated the old prerogative writs once available in the pre-

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writ appeals. In re Livolsi, 85 N.J. 576, 593 (1981).

The intent of the prerogative writ clause of the 1947 Constitution, N.J. Const. art. VI, § 5, ¶ 4, was to strengthen and streamline the prerogative writ mechanism by consolidating the traditional prerogative writs (certiorari, quo prohibitions, and mandamus) into one action. In re Livolsi, 85 N.J. at 593. To this end, the clause eliminates confusion about which writ is appropriate to file in a given case by providing for a single proceeding in lieu thereof. Ward v. Keenan, 3 N.J. 298, (1949) Moreover, while prerogative writ actions were traditionally used by citizens to challenge decisions or actions by government agencies, the 1947 New Jersey Constitution affords an action in lieu of prerogative writ "as of right," except in criminal cases. Alexander's Dep't Stores v. Paramus, 125 N.J. 100, 107 (1991); N.J. Const. art. VI, § 5, ¶ 4; see also Sartoga v. Borough of West Paterson, 346 N.J. Super. 569 (App. Div. 2002) (action in lieu of prerogative writ brought by city and two of its residents challenging the validity of a zoning ordinance).

Here, Leonia exceeded its legal authority in enacting the Ordinances because the Legislature has not granted municipalities authority under Title 39, or any other provision of our statutes, to restrict access to certain streets in such a manner proscribed by the Ordinances, as discussed in Point IV of this brief. Whether mandamus is appropriate to compel Leonia to

perform the ministerial function of following the laws governing the passage of municipal traffic ordinances, see, e.g., N.J.S.A. 39:4-8; N.J.S.A. 39:4-138; and N.J.S.A. 39:4-197, or certiorari to afford judicial review of Leonia's failure to follow the same in passing the Ordinances, see Alexander's Dep't Stores, 125 N.J. at 107-08, the result is the same: An action in lieu of prerogative writ is appropriate to address Leonia's violation of New Jersey law in adopting and enforcing the Ordinances. Paruszewski v. Twp. of Elsinboro, 154 N.J. at 58. Accordingly, the DOT has a right to maintain this action in lieu of prerogative writ against Leonia as a matter of law.

POINT III

THE MORE SPECIFIC APPLICABLE LIMITATIONS OF TITLE 39 CONTROL OVER LEONIA'S MORE GENERAL AUTHORITY TO ENACT ORDINANCES PURSUANT TO N.J.S.A. 40:48-2.

When interpreting a statute, the best indicator of the Legislature's intent is the statutory language. DiProspero v. Penn, 183 N.J. 477, 492 (2005). In this regard, a statute's terms should be afforded their ordinary meaning and significance, and should be read in context to give sense to the legislation as whole. Ibid. (citations omitted); see also N.J.S.A. 1:1-1 (instructing that the words and phrases within New Jersey statutes to be read and construed in context). If the plain language of the statute leads to a clear and unambiguous result, there is no need for further interpretive analysis. Richardson v. Bd. of Trs.,

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Police & Fireman's Ret. Sys., 192 N.J. 189, 195 (2007) (citing DiProspero v. Penn, 183 N.J. at 492). Moreover, when there are two statutes in conflict with one another, the more specific controls over the more general. N.J. Transit Corp. v. Borough of Somerville, 139 N.J. 582, 591 (1995).

Although N.J.S.A. 40:48-2 provides municipalities with authority to make, amend, repeal and enforce certain ordinances, regulations, rules, and by-laws not otherwise provided by the Legislature, that authority is not absolute. In this regard, the plain language of the statute dictates that such ordinances may only be enacted when they are "not contrary to the laws of this state or of the United States." N.J.S.A. 40:48-2. As discussed more fully in Point IV of this brief, Title 39 restricts a municipality's ability to enact and enforce ordinances which concern, regulate, or govern traffic or traffic conditions, and requires approval of the same by the DOT Commissioner, except as provided within the applicable statutes within Title 39.

Because Leonia adopted the Ordinances without authority under the provisions of Title 39, including but not limited to N.J.S.A. 39:4-8, N.J.S.A. 39:4-138 and N.J.S.A. 39:4-197, the Ordinances are legally invalid based upon the plain language of N.J.S.A. 40:48-2. Moreover, because the more general language of N.J.S.A. 40:48-2 must yield to the more specific statutes within Title 39, the Ordinances are null and void as a matter of law.

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POINT IV

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

The DOT respectfully incorporates by reference the Legal Argument within Point I of the DOT's brief in support of its motion for summary judgment.

In addition, in interpreting a statute, the overriding goal is to give effect to the Legislature's intent. DiProspero v. Penn, 183 N.J. at 492. "[T]he best indicator of that intent is the statutory language"; therefore, it is the first place to look. Ibid. (citation omitted). If the plain language leads to a clear and unambiguous result, then the interpretive process should end, without resort to extrinsic sources. Ibid. (citations omitted).

Leonia's arguments ignore the plain language of the applicable sections of Title 39. In this regard, pursuant to N.J.S.A. 39:4-8(a), except as otherwise provided in this section, no ordinance regulating or governing traffic or traffic conditions adopted by a body having jurisdiction over highways shall be of any force or effect unless the same is approved by the DOT Commissioner. In addition, pursuant to N.J.S.A. 39:4-8(c), subject to the provisions of N.J.S.A. 39:4-138, a municipality may approve a list of traffic regulations without the DOT's Commissioner's approval and the Ordinances on their face do not fall within the statutorily approved list within N.J.S.A 39:4-

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8(c).

Also, pursuant to N.J.S.A. 39:4-8(b)(1), a municipality may, without the DOT Commissioner's approval, establish by ordinance, resolution or regulation any of the provisions contained in N.J.S.A. 39:4-197. Pursuant to N.J.S.A. 39:4-197, a municipality may adopt a traffic ordinance within the limitations of N.J.S.A. 39:4-197, which provides:

Except as otherwise provided in R.S.39:4-8, 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 or any supplement to this chapter; except that a municipality may pass, without the approval of the commissioner, and consistent with the current standards prescribed by the Manual on Uniform Traffic Control Devices for Streets and Highways, ordinances or resolutions, or by ordinances or resolutions may authorize the adoption of regulations by the board, body, or official having control of traffic in the public regulating streets, special conditions existent in the municipality on the subjects and within the limitations following

[N.J.S.A. 39:4-197; emphasis added.]

Following this language, N.J.S.A. 39:4-197 lists the potential traffic subject matters that fall within the limitations.

As such, based on the plain language of N.J.S.A. 39:4-8 and N.J.S.A. 39:4-197, a municipality may pass an ordinance without the DOT Commissioner's approval only pursuant to N.J.S.A. 39:4-8 (c) and within the list included within N.J.S.A. 39:4-197. And N.J.S.A. 39:4-8 and N.J.S.A. 39:4-197 do not provide Leonia with

the authority to have adopted the Ordinances, as discussed within Point I of the DOT's brief in support of its motion for summary judgment.

Moreover, contrary to Leonia's argument, N.J.S.A. 39:4-197(1)(e) does not provide legal authority for the Ordinances. In this regard, N.J.S.A. 39:4-197(1)(e) permits a municipality by ordinance to regulate "the passage or stopping of traffic at certain congested street corners and designated points, including the establishment of multi-way stop controls." Instead, by the Ordinances, Leonia has (1) established no through streets on most of Leonia's streets for impacted persons during specified hours; and (2) regulated traffic based on a residency classification or based on whether a person is seeking to travel to and/or from a destination in Leonia. These traffic regulations contained in the Ordinances on their face do not fall within N.J.S.A. 39:4-197(1)(e).

In addition, even assuming, for the sake of argument only, that Leonia had authority under Title 39 to adopt the Ordinances, N.J.S.A. 39:4-8(a) provides that "Notwithstanding any other provision of this section to the contrary, any municipal... ordinance, resolution, or regulation which places any impact on a State roadway shall require the approval of the commissioner."

N.J.S.A. 39:4-8(a) (emphasis added). The DOT, through its regulatory authority, defined "impact on a State highway" within

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N.J.A.C. 16:27-2.1. In this regard, 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, filed with the DOT's motion for summary judgment.) Although 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. (DOT Certification of Mark A. Hiestand, page 5, paragraph 12.) As such, pursuant to N.J.S.A. 39:4-8(a), the Ordinances are legally invalid.

Additionally, despite the plain language of N.J.S.A. 39:4-8(a), Leonia conflates the "undue traffic burden or impact" language of N.J.S.A. 39:4-8(b) with the "any impact" language of N.J.S.A. 39:4-8(a). Contrary to Leonia's argument, the plain language of N.J.S.A. 39:4-8(a) provides that, "Notwithstanding any other provision of this section to the contrary, any municipal

ordinance, resolution, or regulation which places any impact on a State roadway shall require the approval of the commissioner."

N.J.S.A. 39:4-8(a) (emphasis added). Leonia is simply misconstruing

N.J.S.A. 39:4-8.

POINT V

THE ATTORNEY GENERAL'S OPINION STATING THAT MUNICIPALITIES LACK LEGAL AUTHORITY TO ADOPT "NO THROUGH STREET" ORDINANCES CONTINUES TO PROVIDE PERSUASIVE AUTHORITY APPLICABLE TO THIS CASE.

In interpreting the meaning of a statute, the New Jersey Supreme Court has placed great weight on the interpretation of legislation by the administrative agency to whom its enforcement is entrusted. Peper v. Princeton University Board of Trustees, 77 N.J. 55, 70 (1978). Where an agency has based its statutory interpretation on an opinion by the Attorney General, our Supreme Court has held that a court should attach weight to the Attorney General's opinion. Ibid.

Applying these principles to our case, 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

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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." <u>Ibid.</u> (DOT Exhibit A.) Contrary to Leonia's argument, this Attorney General opinion remains legally valid and provides persuasive authority 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, such as Leonia has done by adopting the Ordinances.

In addition, contrary to Leonia's argument, N.J.S.A. 39:4-8(c)(6), which allows a municipality to adopt an ordinance, resolution or regulation approving "street closings for periods up to 48 continuous hours," is not applicable here. As a threshold matter, based on the plain language of N.J.S.A. 39:4-8(c)(6), the statute does not apply here because Leonia has (1) established permanent no through streets on most of Leonia's streets for impacted persons during specified hours; and (2) has regulated traffic based on a residency classification or based on whether a person is seeking to travel to and/or from a destination in Leonia. In fact, Leonia has asserted that temporary road closures with temporary signage would not address the traffic impact on Leonia. (Leonia's Certification of Thomas Rowe, page 3, paragraph 9.)

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Therefore, N.J.S.A. 39:4-8(c)(6) is not applicable to this case.

POINT VI

LEONIA DOES NOT HAVE LEGAL AUTHORITY TO RESTRICT ACCESS TO CERTAIN STREETS BASED UPON A RESIDENCY CLASSIFICATION OR BASED UPON THE TRAVELER'S DESTINATION.

Although a municipality enjoys a considerable degree of discretion in the exercise of its authority under N.J.S.A. 40:48-2, that discretion is only afforded "so long as it operates within its delegated authority." Viera v. Town Council of Parsippany-Troy Hills, 156 N.J. Super. 19, 22 (App. Div. 1997). To this end, a municipality's authority to control and regulate its streets is subject to the provisions of Title 39. Id. at 21; see also Samuel Braen, Inc. v. Waldwick, 28 N.J. 476 (1958) (finding an ordinance restricting commercial vehicles from municipal streets to be valid when enacted in accordance with N.J.S.A. 39:8-197(b)); Formal Opinion No. 5, N.J. Attorney General (1955) (DOT Exhibit A) (stating that a municipality's power to restrict the right of the public to the free use of its streets must arise by way of legislative grant).

Contrary to Leonia's arguments, the DOT's current motion for summary judgment does not challenge the constitutionality of the residency classification. In this regard, Leonia's reliance on County Bd. of Arlington County v. Richards, 434 U.S. 5 (1977) and Martell's Tiki Bar, Inc. v. Governing Body of Point Pleasant Beach, 2015 WL 132559 (Leonia Exhibit 2), which discuss the validity of

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residential parking ordinances in light of the Equal Protection Clause of the Fourteenth Amendment, and its reliance on <u>Lutz v York</u>, 899 F.2d 255 (3d Cir. 1990), which discuss whether an ordinance outlawing "cruising" violated the plaintiffs' right to travel, is misplaced. Similarly, by way of its motion, the DOT does not attempt to argue that Leonia is not entitled to exercise certain discretionary powers under N.J.S.A. 40:48-2, such as those ordinances at issue in <u>Quick Check Food Stores v. Springfield</u>, 83 N.J. 438 (1980), which established mandatory closing hours for businesses in certain parts of the municipality.

Rather, the Legislature has specifically limited Leonia's power to enact ordinances concerning, regulating, or governing applicable traffic or traffic conditions through the provisions of Title 39. To this end, while the Legislature has amended Title 39 several times to extend these powers, most recently in 2008, it has never been amended to extend to municipalities the authority to limit access to municipal streets in such a way as the Ordinances provide. Moreover, the Legislature has not established any explicit authority for Leonia, through the Ordinances, to restrict 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.

As discussed in Point III of this brief, because Leonia adopted the Ordinances without authority under Title 39, including

but not limited to N.J.S.A. 39:4-8, N.J.S.A. 39:4-138 and N.J.S.A. 39:4-197, the Ordinances are legally invalid based upon the plain language of N.J.S.A. 40:48-2. Moreover, because the more general language of N.J.S.A. 40:48-2 must yield to the more specific statutes within Title 39, the Ordinances are null and void as a matter of law.

POINT VII

BECAUSE LEONIA FAILED TO PROVIDE NOTICE OF THE ORDINANCES TO THE ADJOINING MUNCIPALITIES PRIOR TO THE ADOPTION OF THE ORDINANCES, THE ORDINANCES ARE LEGALLY INVALID.

Regarding notice of applicable traffic ordinances to adjoining municipalities, N.J.S.A. 39:4-8(a) provides:

Prior to the adoption of any municipal . ordinance . . . which places any impact on roadways in an adjoining municipality . . . , the governing board or body of the municipality . . . shall provide appropriate notice to the adjoining municipality . . .

[N.J.S.A. 39:4-8(a); emphasis added.]

In applying this statute to this case, Leonia admits that it is adjacent to several other municipalities within Bergen County, including Fort Lee, Englewood, Ridgefield Park, Palisades Park, and Teaneck (DOT Certification of Mark A. Hiestand, page 3, paragraph 7, filed with the DOT's motion for summary judgment). (Leonia's Response to the DOT's Statement of Material Facts, page 2, paragraph 5.) And Leonia cannot reasonably argue that the

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Ordinances do not have any impact on the adjoining municipalities. Despite this, Leonia ignored the plain language of N.J.S.A. 39:4-8(a), and failed to provide notice to the adjoining municipalities prior to adopting the Ordinances. As such, the Ordinances are null and void as a matter of law. N.J.S.A. 39:4-8(a).

POINT VIII

BASED ON THE PLAIN LANGUAGE OF THE APPLICABLE STATUTES WITHIN TITLE 39, AND THE LANGUAGE OF THE ORDINANCES, AND GIVEN THE UNDISPUTED MATERIAL FACTS, NO DISCOVERY IS NEEDED AND THE COURT CAN GRANT THE DOT'S MOTION FOR SUMMARY JUDGMENT AS A MATTER OF LAW.

This case is ripe for summary judgment, pursuant to R.

4-46-2. In this regard, actions in lieu of prerogative writ 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. Twp. of Elsinboro, 154 N.J. at 58. 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).

In this case, as discussed above and in the DOT's brief in support of its motion for summary judgment, based on an analysis of the plain language of the applicable statutes within Title 39, and the language of the Ordinances, the court can determine that the ordinances are legally invalid. This does not require any discovery.

In addition, regarding the DOT's additional legal arguments, as discussed within the Statement of Facts above, Leonia has failed, in substance, to refute the DOT's Statement of Material Facts. Leonia relies upon the certifications of Mr. Rowe and Mr. Zeigler. These certifications overall provide information regarding the Leonia's decision to adopt the Ordinances, events following the adoption of the Ordinances, and Leonia's perspective and opinions regarding communications with the DOT. However, these certifications do not raise any issues as to any material facts regarding the pending motions. In addition, contrary to Leonia's argument, the determination of the DOT's legal authority to regulate the traffic on the municipal roads in Leonia is a matter of law for the court to determine. Mayflower Securities v. Bureau of Securities, 64 N.J. at 93.

Accordingly, no discovery is needed in order for the court to grant the DOT's motion for summary judgment and deny Leonia's motion to dismiss, as a matter of law.

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CONCLUSION

For the foregoing reasons, and the reasons that the DOT has asserted in its motion for summary judgment brief, the DOT respectfully submits that the DOT's motion for summary judgment should be granted and Leonia's cross-motion to dismiss should be denied as a matter of law.

Respectfully submitted,

GURBIR S. GREWAL ATTORNEY GENERAL OF NEW JERSEY

Deputy Attorney General (Attorney ID No. 030311988)

Ryne A. Spengler Deputy Attorney General (Attorney ID No. 169002015)

Encl.

cc via eCourts and email:

Jacqueline M. Rosa, Esq.

Brian M. Chewcaskie, Esq.

Ruby Kumar-Thompson, Esq.

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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.

STATE OF NEW JERSEY
DEPARTMENT OF TRANSPORTATION,

Plaintiff-Intervenor,

1100110111 ------

ν.

BOROUGH OF LEONIA, NEW

JERSEY,

Defendant.

STATEMENT ON BEHALF OF THE NEW JERSEY DEPARTMENT OF

TRANSPORTATION IN RESPONSE TO THE BOROUGH OF LEONIA'S

COUNTER STATEMENT OF

MATERIAL FACTS

The State of New Jersey Department of Transportation (DOT) provides the following response to the Borough of Leonia's Counter Statement of Material Facts, which relies upon and incorporates by reference the Certifications of Thomas Rowe and Judah Ziegler:

Certification of Thomas Rowe

1 through 13. The DOT admits the factual allegations of paragraphs 1 through 13 of the Certification of Thomas Rowe (Mr. Rowe) only for the purpose of the currently pending motions. However, these allegations are not material to the pending motions.

14. The DOT denies the allegations of paragraph 14 of the Certification of Mr. Rowe because the Borough of Leonia (Leonia) does not provide a timeframe, dates, details or documents in support of these allegations. In addition, these allegations are not material to the pending motions.

15 through 23. The DOT admits the factual allegations of paragraphs 15 through 23 of the Certification of Mr. Rowe only for the purpose of the currently pending motions. However, these allegations are not material to the pending motions.

24 and 25. The DOT denies the allegations of paragraphs 24 and 25 of the Certification of Mr. Rowe as

inadmissible hearsay. In addition, these allegations are not material to the pending motions.

- 26. The DOT denies the allegations of paragraph 26 of the Certification of Mr. Rowe as Mr. Rowe's opinion and not facts. In addition, these allegations are not material to the pending motions.
- 27. The DOT admits the factual allegations of paragraph 27 of the Certification of Mr. Rowe only for the purpose of the currently pending motions. However, these allegations are not material to the pending motions.
- 28. The DOT admits the factual allegations of paragraph 28 of the Certification of Mr. Rowe only for the purpose of the currently pending motions, except that the DOT denies the allegations regarding the DOT's knowledge of navigational apps and the impact of same (DOT Certification of Kevin Israel, page 2, paragraph 3). However, these allegations are not material to the pending motions.
- 29 through 31. The DOT admits the factual allegations of paragraphs 29 through 31 of the Certification of Mr. Rowe only for the purpose of the currently pending motions. However, these allegations are not material to the pending motions.

- 32. The DOT denies the allegations of paragraph 32 of the Certification of Mr. Rowe as a statement of Mr. Rowe's opinion, and not a fact. In addition, these allegations are not material to the pending motions.
- 33. The DOT admits the factual allegations of paragraph 33 of the Certification of Mr. Rowe only for the purpose of the currently pending motions. However, these allegations are not material to the pending motions.
- 34. The DOT denies the allegation of paragraph 34 of the Certification of Mr. Rowe regarding the DOT's knowledge of navigational applications (DOT Certification of Kevin Israel, page 2, paragraph 3). The DOT denies the remaining portion of these allegations as inadmissible hearsay. In addition, these allegations are not material to the pending motions.
- 35. The DOT denies the allegation of paragraph 35 of the Certification of Mr. Rowe regarding the characterization of the DOT as an opinion, rather than a fact, and Leonia's exercise of its police powers as an opinion or a legal conclusion, rather than a fact. The DOT admits the remaining factual allegations of paragraph 35 only for the purpose of the currently pending motions. However, these factual allegations are not material to the pending motions.

36 and 37. The DOT admits the factual allegations of paragraphs 36 and 37 of the Certification of Mr. Rowe only for the purpose of the currently pending motions. However, these allegations are not material to the pending motions.

Certification of Judah Zeigler

1 through 5. The DOT admits the factual allegations of paragraphs 1 through 5 of the Certification of Judah Zeigler (Mr. Zeigler) only for the purpose of the currently pending motions. However, these allegations are not material to the pending motions.

6 and 7. The DOT denies the factual allegations of paragraphs 6 and 7 of the Certification of Mr. Ziegler because Leonia does not provide a timeframe, dates, details or documents in support of these allegations. In addition, these allegations are not material to the pending motions.

8 through 11. The DOT admits the factual allegations of paragraphs 8 through 11 of the Certification of Mr. Zeigler only for the purpose of the currently pending motions. However, these allegations are not material to the pending motions.

12. The DOT denies the factual allegations of paragraph 12 of the Certification of Mr. Zeigler as a mischaracterization of what the DOT indicated at that meeting.

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In fact, the DOT indicated that it would attempt to work with

Leonia officials in an effort to address the applicable traffic

conditions in accordance with the law (DOT Certification of

Kevin Israel, page 2, paragraph 4). In addition, these

allegations are not material to the pending motions.

13 through 17. The DOT admits the factual allegations

of paragraphs 13 through 17 of the Certification of Mr. Zeigler

only for the purpose of the currently pending motions. However,

these allegations are not material to the pending motions.

18. The DOT denies the allegations of paragraph 18 of

the Certification of Mr. Zeigler as primarily Mr. Zeigler's

opinions rather than facts. In addition, these allegations are

not material to the pending motions.

Respectfully submitted,

GURBIR S. GREWAL

ATTORNEY GENERAL OF NEW JERSEY

Bv:

Whilip J. Espyriosa

Deputy Attorney General

(Attorney AD No.: 030311988)

Dated: August 24, 2018

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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, : <u>Civil Action</u>

v. :

BOROUGH OF LEONIA, ET AL., :

Defendants. :

STATE OF NEW JERSEY

DEPARTMENT OF TRANSPORTATION,

Plaintiff-Intervenor,

: CERTIFICATION OF KEVIN

E, ISRAEL

BOROUGH OF LEONIA, NEW :

JERSEY.

i

Defendant.

Kevin E. Israel certifies unto law and says:

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1. Since November 2014, I have been employed by the

State of New Jersey Department of Transportation (DOT). Since

March 2017, I have served as the DOT's Director of the Office of

Community Relations. As such, I am familiar with this matter.

I have prepared this certification in support of

the DOT's motion for summary judgment in this case.

3. The DOT has employees who are familiar with

navigational applications (apps).

4. At the meeting with Leonia officials on March 26,

2018, the DOT indicated that it would attempt to work with

Leonia officials in an effort to address the applicable traffic

conditions in accordance with the law.

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

Kevin E. Isrdel

Dated: August 22, 2018

DOT EXHIBIT J

Print Message: Dell Archive Manager Page 1 of 1

Sent:7/11/2018 7:41:04 PM

Email

From: Philip Espinosa

brian@gmcnjlaw.com; JROSA@SEIGELLAW.COM

CC: Carol Janelli

Subject: Jacqueline Rosa v. Borough of Leonia, et al. (DOT's Motion for Summary Judgment)

Attachments may contain viruses that are harmful to your computer. Attachments may not display correctly,

image001.jpg (8Kb) CivilCaseJacket.pdf (2352Kb)

Good evening Counsel.

Please see the attached motion for summary judgment on behalf of the State of New Jersey Department of Transportation that I filed this evening via eCourts.

Thank you. Phil



Philip J. Espinosa

Deputy Attorney General/Section Chief Transportation, Construction & Condemnation

Section

State of New Jersey Department of Law & Public

Division of Law | Richard J. Hughes Justice

25 Market St. | P.O. Box 114 | Trenton, NJ

08625-0114

T: (609) 376-3300 | F: (609) 943-5853

Philip.Espinosa@law.njoag.gov

DOT EXHIBIT K

HUD-L-000607-18 08/21/2018 11:41:24 AM Pg 1 of 2 Trans ID: LCV20181450832

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
(973)845-6700

Gittleman Muhlstock & Chewcaskie
Brian M. Chewcaskie, Esq. (Attorney ID No. 021201984)
2200 Fletcher Avenue
Fort Lee, New Jersey 07024
(201)944-2300
Attorneys for Defendant, Borough of Leonia

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,

٧.

BOROUGH OF LEONIA, NEW JERSEY,

Defendant.

SUPERIOR COURT OF NEW JERSEY LAW DIVISION: HUDSON COUNTY

DOCKET NO.: HUD-L-607-18

Civil Action

DEFENDANT'S RESPONSE TO STATEMENT OF MATERIAL FACTS OF THE DEPARTMENT OF TRANSPORTATION AND COUNTERSTATEMENT

Before: Peter F. Bariso, Jr., P.J.S.C. Motion Date: August 31, 2018

Pursuant to R. 4:46-2, Defendants hereby submit the following response to Plaintiff/Intervenor's Statement of Material Facts:

- Admitted.
- 2. Denied that Leonia has prohibited "through" traffic regarding streets. Access is from a designated point in the Borough to a destination outside of the local zone is still permitted at all other hours.

3. Objection is made to Paragraph 3 as being vague since the term "close proximity" is not defined.

- 4. Admitted.
- 5. Admitted.
- 6. Admitted.
- 7. Denied.
- 8. Admitted.

COUNTER STATEMENT OF MATERIAL FACTS

Defendants rely upon and incorporate herein by reference the Certifications of Tom Rowe and Judah Ziegler in lieu of setting forth a more formal Counter Statement of Material Facts in Opposition to Plaintiff's and Intervenor's Motions for Summary Judgment.

CLEARY GIACOBBE ALFIERI JACOBS, LLC Attorneys for Defendant, Borough of Leonia

s/ Ruby Kumar-Thompson
RUBY KUMAR-THOMPSON, ESQ.

DATED: August 21, 2018