

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

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JACQUELINE ROSA, :

Plaintiff, :

Civil Action

v. :

BOROUGH OF LEONIA, ET AL., :

Defendants. :

**NOTICE OF MOTION FOR SUMMARY  
JUDGMENT**

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STATE OF NEW JERSEY :  
DEPARTMENT OF TRANSPORTATION, :

Plaintiff-Intervenor, :

v. :

BOROUGH OF LEONIA, NEW :  
JERSEY, :

Defendant. :

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To: Motion's Clerk and All Counsel of Record

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

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

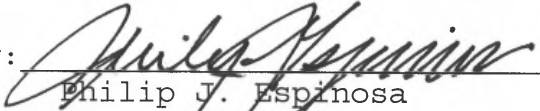
Pursuant to Rule 1:6-2(d), the undersigned respectfully requests oral argument.

A proposed form of order is attached.

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

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

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

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

Dated: July 11, 2018

GURBIR S. GREWAL  
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JACQUELINE ROSA, :

Plaintiff, :

v. :

BOROUGH OF LEONIA, ET AL., :

Defendants. :

Civil Action

**ORDER FOR SUMMARY JUDGMENT**

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STATE OF NEW JERSEY :

DEPARTMENT OF TRANSPORTATION, :

Plaintiff-Intervenor, :

v. :

BOROUGH OF LEONIA, NEW :

JERSEY, :

Defendant. :

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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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DOCKET NO.: HUD-L-607-18

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JACQUELINE ROSA, :

Plaintiff, :

Civil Action

v. :

BOROUGH OF LEONIA, ET AL., :

Defendants. :

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STATE OF NEW JERSEY :

DEPARTMENT OF TRANSPORTATION, :

Plaintiff-Intervenor, :

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

v. :

BOROUGH OF LEONIA, NEW :

JERSEY, :

Defendant. :

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

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

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

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

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

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

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


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



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

Respectfully submitted,

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

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

Dated: July 11, 2018

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

PRELIMINARY STATEMENT

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

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

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

#### STATEMENT OF FACTS

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

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

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

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

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

[DOT Exhibit B.]

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

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

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

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

[DOT Exhibit D.]

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

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

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

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

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

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

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



of Leonia,  
[http://www.leonianj.gov/depts/leonia\\_safe\\_streets\\_information.htm](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), <http://www.wptv.com/news/local-news/water-cooler/leonia-new-jersey-town-wants-residential-streets-removed-from-gps-apps-may-fine-drivers-200>.) Leonia's mayor stated, according to a news report, "The first thing the officer is going to say is, 'Do you have business in Leonia?'" (Dave Carlin, Leonia, New Jersey: Town wants residential streets removed from GPS apps, may fine drivers \$200, WCBS-TV/CNN (Jan. 10, 2018, 5:41 AM), <http://www.wptv.com/news/local-news/water-cooler/leonia-new-jersey-town-wants-residential-streets-removed-from-gps-apps-may-fine-drivers-200>.)

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

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

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

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

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

LEGAL ARGUMENT

POINT I

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



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

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

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

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

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

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

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

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

Street, Prospect Street, Palisade Avenue, Hillside Avenue, Cottage Place, Harrison Street, Christie Heights Street, Vreeland Avenue, Van Orden Avenue, Overlook Avenue, Longview Avenue and Lakeview Avenue; and (b) impact traffic within 500 feet of State Route 93 because Leonia has installed signs on the aforementioned municipal streets adjacent to the state highway. (DOT Certification of Mark A. Hiestand, page 4, paragraph 11.)

However, despite the fact that the Ordinances have an impact on a State highway as defined by N.J.A.C. 16:27-2.1, Leonia failed to submit the Ordinances to the DOT Commissioner for approval, as required by N.J.S.A. 39:4-8(a). (DOT Certification of Mark A. Hiestand, page 5, paragraph 12.) Accordingly, the Ordinances should be declared null and void as a matter of law. R. 4:46-2.

## POINT II

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

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

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

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

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

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

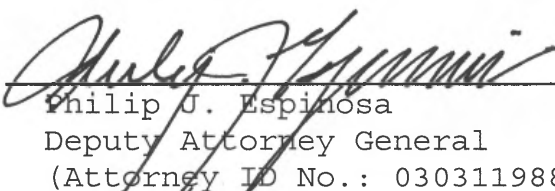
CONCLUSION

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

Respectfully submitted,

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

By:

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

Dated: July 11, 2018

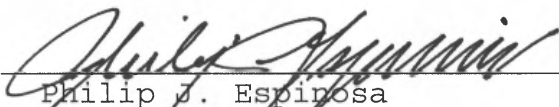
CERTIFICATION OF SERVICE

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

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

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

Dated: July 11, 2018



GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY  
R.J. Hughes Justice Complex  
25 Market Street  
P.O. Box 114  
Trenton, New Jersey 08625  
Attorney for the State of New Jersey,  
Department of Transportation  
By: Philip J. Espinosa (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, :

v. :

BOROUGH OF LEONIA, ET AL., :

Defendants. :

Civil Action

---

STATE OF NEW JERSEY :

DEPARTMENT OF TRANSPORTATION, :

Plaintiff-Intervenor, :

v. :

CERTIFICATION OF MARK A.  
HIESTAND

BOROUGH OF LEONIA, NEW :

JERSEY, :

Defendant. :

---

Mark A. Hiestand certifies unto law and says:

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

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

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

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

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

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

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

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

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

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

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

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

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

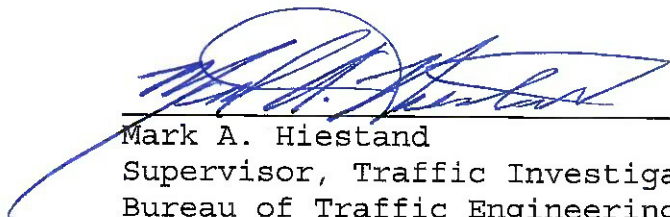
12. Leonia did not submit the ordinances to the DOT Commissioner for approval.

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

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

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

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



---

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

Dated: July 11, 2018

# DOT EXHIBIT A

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

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

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

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

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

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

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

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

Very truly yours,

GROVER C. RICHMAN, JR.,  
Attorney General.

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

CJK:MG

MARCH 4, 1955.

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

### FORMAL OPINION—1955. No. 5.

DEAR DIRECTOR GASSERT:

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

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

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

(1) Ordinance

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

(2) Ordinance or resolution

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

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

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

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

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

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



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

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

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

Very truly yours,

GROVER C. RICHMAN, JR.,  
*Attorney General.*

By: JAMES T. KIRK,  
*Deputy Attorney General.*

JTK/LL

MARCH 4, 1955.

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

**FORMAL OPINION 1955. No. 6.**

DEAR PRESIDENT KELLY:

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

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

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

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

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

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

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

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

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

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

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

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

Yours very truly,

GROVER C. RICHMAN, JR.,

*Attorney General*

By: JOHN F. CRANE,

*Deputy Attorney General*

JFC:b.

# **DOT EXHIBIT B**

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

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

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

**Section 1.**

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

§194-25.1 Closing of Certain Streets.

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

Article XVIII. Streets Closed to Traffic.

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

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

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

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

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

Broad Avenue -- Westbound of Broad Avenue

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

Fort Lee Road -- Southbound of Fort Lee Road

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

Fort Lee Road -- Northbound of Fort Lee Road

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

Grand Avenue -- Eastbound of Grand Avenue

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

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

Grand Avenue – Westbound of Grand Avenue

Maple Street	Do Not Enter
Schor Avenue	Do Not Enter

Bergen Boulevard – Westbound of Bergen Boulevard

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

Glenwood Avenue – Northbound of Oakdene Avenue

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

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

Allaire Avenue  
Summit Avenue  
Park Avenue  
Highwood Avenue  
Oakdene Avenue

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

Intersections with Traffic Control Devices

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

Section 2.

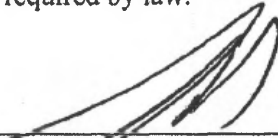
All other provisions of Chapter 194 "Vehicles and Traffic" of the Code of the Borough of Leonia are hereby ratified and confirmed.

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.

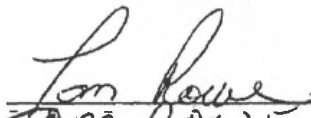
This Ordinance will take effect upon publication as required by law.




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Judah Zeigler, Mayor

ATTEST:




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**TOM ROWE**  
Borough Clerk

ACTING

# DOT EXHIBIT C

**BOROUGH OF LEONIA  
COUNTY OF BERGEN**

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

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

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

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

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

Section 1.

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

§194-25.2 Violations and Penalties.

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

Section 2. Repealer.

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

Section 3.

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

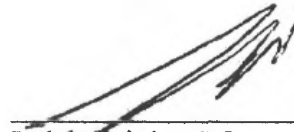


Section 4. Severability.

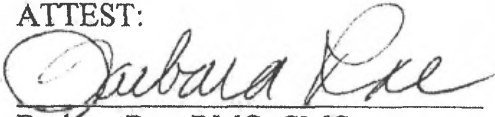
If any article, section, sub-section, sentence, clause, or phrase of this Ordinance is for any reason deemed to be unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

Section 5. Effect.

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

  
\_\_\_\_\_  
Judah Zeigler, Mayor

ATTEST:

  
\_\_\_\_\_  
Barbara Rae, RMC, CMC  
Borough Clerk

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

# DOT EXHIBIT D

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

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

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

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

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

**Section 1.**

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

§194-25.1 Closing of Certain Streets.

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

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

Article XVIII. Streets Closed to Traffic.

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

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

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

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

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

**Road Name/Direction of Road**

**Prohibited Entry**

Broad Avenue – Eastbound from Broad Avenue

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

Broad Avenue – Westbound of Broad Avenue

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

Vreeland Avenue	Do Not Enter
Christie Heights Street	Do Not Enter
Harrison Street	Do Not Enter

Fort Lee Road – Southbound of Fort Lee Road

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

Fort Lee Road – Northbound of Fort Lee Road

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

Grand Avenue – Eastbound of Grand Avenue

Lakeview Avenue	Do Not Enter
Longview Avenue	Do Not Enter
Overlook Avenue	Do Not Enter
Van Orden Avenue	Do Not Enter
Vreeland Avenue	Do Not Enter
Harrison Street	Do Not Enter
Cottage Place	Do Not Enter
Hillside Avenue	Do Not Enter
Palisade Avenue	Do Not Enter
Prospect Street	Do Not Enter
Maple Street	Do Not Enter
Christie Street	Do Not Enter
Park Avenue	Do Not Enter
Highwood Avenue	Do Not Enter
Sylvan Avenue	Do Not Enter
Ames Avenue	Do Not Enter
Oakdene Avenue	Do Not Enter

Grand Avenue – Westbound of Grand Avenue

Maple Street	Do Not Enter
Schor Avenue	Do Not Enter

Bergen Boulevard – Westbound of Bergen Boulevard

Christie Lane	Do Not Enter
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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
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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: <b>West and Eastbound from Broad Ave</b>	No Right and Left Turn
FLR EB/Glenwood Avenue: <b>North and Southbound from FLR</b>	No Right and Left Turn
FLR EB/Station Parkway: <b>Southbound from FLR</b>	No Right Turn
Grand Avenue/Christie Heights: <b>Eastbound from Grand Avenue</b>	No Right and Left Turn
Grand Avenue/Moore Avenue: <b>Eastbound from Grand Avenue</b>	No Right and Left Turn

**Section 2.**


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

**Section 3. Severability.**


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

**Section 4. Effect.**

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

  
\_\_\_\_\_  
Judah Zeigler, Mayor

ATTEST:

  
\_\_\_\_\_  
Barbara Rae, RMC, CMC  
Borough Clerk

**DOT EXHIBIT E**





## State of New Jersey

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

PHILIP D. MURPHY  
*Governor*

DIANE GUTIERREZ-SCACCETTI  
*Acting Commissioner*

SHEILA Y. OLIVER  
*Lt. Governor*

May 8, 2018

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

Dear Mayor Zeigler,

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

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

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

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

Sincerely,

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

**DOT EXHIBIT F**



*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

PHILIP D. MURPHY  
*Governor*

GURBIR S. GREWAL  
*Attorney General*

SHEILA Y. OLIVER  
*Lt. Governor*

March 16, 2018

Via Email and Regular Mail

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

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

Dear Mr. Chewkaskie:

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

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



March 16, 2018

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

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

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

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

March 16, 2018

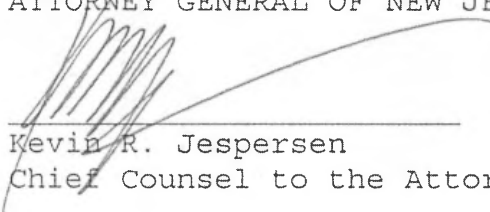
Page 3

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

Respectfully yours,

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

By:

  
\_\_\_\_\_  
Kevin R. Jespersen  
Chief Counsel to the Attorney General