

Teaneck Voices often publishes and or republishes articles and views which shine a light on complex public policy issues. During the week of March 20 Voices became aware of a very thoughtful article about a proposed Teaneck ordinance to amend the Town's current Special Evets Code by local resident and retired lawyer Joseph C. Kaplan that had just appeared in the Jewish Standard where Mr. Kaplan he is a regular columnist. Voices editors sought and received Mr. Kaplan's approval to republish that entire article in Voices so long as the Jewish Standard agreed – which it gracefully did.

Freedom of speech and assembly – Part II

By [JOSEPH C. KAPLAN](#) March 20, 2025,

Toward the end of my column two weeks ago about freedom of speech and assembly, I briefly mentioned the proposed Teaneck ordinance regulating protests, and noted that “I may have more to say as the process unfolds.” Elliot Berman’s rejoinder in last week’s paper, “Another Look at Freedom of Speech in Teaneck,” has changed “may” to “will” and speeded up my timeline for further comments.

Despite our disagreement, I very much appreciate my friend Elie’s knowledgeable and thoughtful response, which helped me better formulate my position. I am also thankful to him for his kind personal words and friendly and respectful tone, which exemplifies what it means to civilly discuss and, even more importantly, disagree about important matters. In these fraught days, tone may almost be as important as substance, and I hope I can emulate Elie’s tone while disagreeing with his substance.

Note, however, that I haven’t yet detailed my concerns with the ordinance. In this column, therefore, I will (a) discuss three additional First Amendment (FA) concepts (apologies for the necessary legalese), and (b) outline my specific objections to the ordinance both in general as well as in the context of what’s been happening in Teaneck over the past 17 months.

1. Freedom of speech. New Jersey is a leader in protecting FA rights. Its constitution, “broader than practically all other [constitutions] in the nation” (Green Party of NJ), grants an affirmative right to all to “freely speak, write and publish his sentiments on all subjects.” It thus provides “broader protections than the familiar ones found in its federal counterpart.” (Borough of Sayerville). Accordingly, in New Jersey, speech on matters of public concern occupy the highest rung of the hierarchy of FA values and enjoy maximum protection (Rocci), including speech we find distasteful; “there is no categorical harassment exception to the First Amendment’s free speech clause . . . which protects offensive discourse, hateful ideas, and crude language because freedom of expression needs breathing room and in the long run leads to a more enlightened society.” (Burkert.)

Second, “time, place, and manner” regulations of protests are an exception to the constitutional directive that “government shall make no law” abridging freedom of speech and assembly. FA jurisprudence therefore requires that such regulations not only be content-neutral, which the Teaneck ordinance is, but also that they be “narrowly tailored to serve the government’s legitimate, content-neutral interests.”

In ruling on an ordinance, courts do not interpret “narrowly tailored” to mean “in the least restrictive manner.” However, in granting an injunction limiting free speech, they do require that the restrictions burden no more speech than necessary. (Murray.)

Whether the proposed ordinance meets the “narrowly tailored” requirement of either an ordinance or an injunction can be debated. But that’s not really the issue, because Teaneck is in the process of drafting an ordinance, not in court defending an already enacted one. And in that context, the council’s goal should not be merely to draft an ordinance that will meet judicial scrutiny. Rather, it should be to draft the finest one possible, one that will best meet New Jersey’s constitutional mandate that our affirmative freedom of speech rights “requires maximum protection.” Putting this in Talmudic terms, Teaneck should enact *le-chatchilah* (optimal) regulations, not *be-di’eved* (after the fact) ones.

2. The ordinance and its problems. There are two specific sections in the ordinance that I find problematic; the ones regulating speech — here, “disruptive” picketing — in residential areas and outside houses of worship. My initial objection is that they restrict more speech than necessary to serve the stated governmental interest — to protect and preserve (i) the sanctity and quiet enjoyment of one’s home (residential) or (ii) one’s freedom of religion (houses of worship), free from harassment and intrusion.

The residential regulation is a blanket one, while the house of worship restriction prohibits such protests within 300 feet of a house of worship “from one hour before any religious program or activity commences until one hour after it concludes.”

Both are unnecessarily vague by failing to define “disruptive,” as well as overbroad. Indeed, the residential regulation bars all targeted protests in residential neighborhoods without limitation, while the house of worship one allows protests only outside an excessive 300-foot buffer zone. Yes, one can scour the cases and find some court upholding a 300-foot zone. But there are New Jersey cases (remember our state’s heightened freedom of speech rights) that require only 100 feet. And our neighbors, Bergenfield and Englewood, have 50- and 8-foot buffer zones. Why 300 feet other than to move the protest out of the sight — and away from the site — of the activity being protested?

The time limitations are similarly excessive. Even if restricted to religious services rather than the vague and overbroad “religious programs and activities,” the prayer service schedule of Teaneck’s largest synagogue would allow demonstrations only between 10:15 a.m. and 12:45 p.m. and 2:45 to 3:30 p.m.

In sum, as long as we’re at the tailoring stage, let’s make a tight and straight seam.

But I also have a conceptual problem with the ordinance: both regulations focus solely on the picketers’ speech, without taking into consideration that it is a reaction to the homeowners’ or the houses of worship’s exercise of their speech.

Let's contrast the residential picketing incident in Bergenfield to the abortion doctor cases to which it has been compared. In the abortion cases, the protests weren't directed at, say, Planned Parenthood meetings in the doctors' homes; they targeted the home in order to cause the doctors anxiety, and to harass them where they live with their families. In Bergenfield, however, the homeowners, exercising their freedom of speech, opened their home to a real estate event, and it was that event, and not the home or its owners, that was the target.

The two house of worship demonstrations were similar. They were not directed at a single one of the thousands of religious services held annually in Teaneck's many synagogues. Rather, they targeted specific events (real estate and Zaka programs) that, while speaking deeply to my, and many others', religious sensibilities, were an exercise of the synagogue's freedom of speech and not of its freedom of religion.

The homeowners and the synagogues had, of course, an absolute right to exercise their freedom of speech and enter into the marketplace of ideas that makes our nation so free and so vibrant. But once they did so, it does not comport with freedom-of-speech values, ethos, and law to prohibit others from countering with their freedom of speech at that marketplace's location. Indeed, if protests against these events can be banned, so too would protests against such (hypothetical) events as Ben-Gvir speaking in a synagogue or Jewish Voice for Peace leaders speaking in a mosque.

Moreover, had the ordinance existed decades ago, my picket of Meir Kahane would have been unfairly prohibited. Yet, once the homeowner, the other attendees, and Kahane exercised their speech rights in inviting and listening to Kahane speak in that house, my right to direct my countering speech to them, necessarily at that location, should not be curtailed. Interestingly, in 1991, Kahane was granted the right by a federal judge to march, against Teaneck's wishes, past the home of an African American leader in a residential section of town.

3. The situation in Teaneck. As noted both in the ordinance's first Whereas clause and by many of its supporters, the ordinance is a reaction to, in Elie's words, the "many

harassing and intimidating demonstrations” that the Jewish community has been subjected to recently.

Though problems exist, they’re not, however, as dire as some make it seem. Teaneck has approximately 20 synagogues, each holding two to 16 religious services every day. Not a single service has been targeted or disrupted, much less curtailed. And thousands of private residences and their occupants have not had their quiet enjoyment disturbed. Three lone incidents, all of which related to countering speech with which the protesters disagreed, are not a valid basis for the ordinance.

Note, I’m not objecting to other provisions in the ordinance, like regulating, as parades, the loud and hateful anti-Israel car rallies seemingly directed at Jews qua Jews, or prohibiting banging drums, blowing air horns, and blocking resident access in residential sections, all of which impose safety and quality-of-life protections without infringing FA rights. Similarly, illegal acts committed at otherwise protected demonstrations, like throwing paint balls and yelling at and frightening people, as happened at the Keter Torah demonstration, are not protected activities and should be handled appropriately by the police.

There’s another narrative I see on social media and in the press and hear from friends outside Teaneck: that the Teaneck Jewish community is being harassed and intimidated, that our right to pray and assemble is being threatened or actually curtailed, that we live in fear.

As a long-time and active Teaneck resident I reject this narrative for objective and subjective reasons. Objectively, two synagogue demonstrations, one Bergenfield home picket, and several unruly car rallies in 17 months do not support claims of harassment, intimidation, threats, and fear.

And subjectively, I don’t feel that way at all. I go to shul at least one day a week for services and also attend other programs there; I participate in classes in a shul/yeshiva three days a week. Yet I have never felt an ounce of harassment, intimidation, or fear. And unlike the Teaneck woman who commented on Facebook that her husband

questioned whether it was safe to wear his kippah publicly in Teaneck, I always wear my kippah proudly, weather permitting, in my walks all around town, and have never considered switching to a baseball hat.

In fact, I recently wore it at two Muslim events in Rodda: a large celebration of Muslim Heritage month and a smaller Ramadan educational program. True, I was targeted because of my kippah. At the Ramadan program several people approached me to make sure I knew that kosher cookies were available, and at the Muslim Heritage Month celebration the person running the event, seeing my kippah, personally welcomed me (as did many others), and asked one of his assistants to help me find the kosher food table.

As I wrote a year ago, the horrors of October 7, 2023, frayed community relations in Teaneck. And no cure has yet been found. But overstating the problem and imposing regulations that will cause more difficulties is not the answer.

4. Conclusion. Two points. First, our Teaneck Jewish community is a strong and vocal one. There's no reason to let demonstrations or bombastic, frivolous letters stop us from holding important events, stop us from participating in religious services and the multitude of other programs in our synagogues and schools, or stop us from raising our voices loudly and proudly in the public arena in support of causes we hold dear including — especially now — strong support of Israel, as we've done in Teaneck in at least three large outdoor gatherings since October 7, all of which I attended.

And second, I trust it's obvious that I disagree 100 percent with the substance and goals of the anti-Israel demonstrations I've referred to; I consider many of the signs carried, and the chants and comments made, by some of the demonstrators to be vile, odious, and false, with some rising to the level of antisemitism. I condemn them totally. And I implore any of my Muslim friends and neighbors who may be reading this that if you choose to exercise your FA rights in disagreement with my community — a right I strongly defend — please do it in a manner that doesn't demonize your Jewish neighbors and the values we embrace.

I'll conclude in a manner similar to my conclusion two weeks ago: Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press.

Amen.