



**AMERICAN ATHEISTS  
LEGAL CENTER**

718 7th Street NW, Washington DC 20001

November 16, 2018

*Via Certified Mail & Email*

Martin J. Lawlor, Jr.  
99 Greenwood Ave.  
Bethel, CT 06801

**Re: Winter holiday displays on town property**

Mr. Lawlor:

Late last year, you and I discussed the matter of religious holiday displays installed on property owned by the Town of Bethel. A Bethel resident wishing to place a non-religious holiday display on P.T. Barnum Square (the Square) was informed that he would need to complete an "Application for Community Use of Parks and Recreation Municipal Center Facilities" and provide a certification of liability insurance in order to do so. At the same time, it appeared that other residents were able to place a religious display on the Square after only a brief conversation with Matthew Knickerbocker, Bethel's First Selectman. (See attached letter dated November 28, 2017.)

It has now come to my attention that a new nativity scene is being dedicated on the Square this coming weekend. The Parks and Recreation Department saw fit to approve the application for this display but opted to leave in an *ad hoc* administrative limbo several pending applications for other displays, claiming that the Board of Selectmen would have to give approval for those applications.

At 6:30 pm on November 13th, the Board of Selectmen held a meeting during which the Board discussed the issue of holiday displays on public property. According to the minutes of that meeting:

First Selectman Knickerbocker stated that due to concerns with the limited space [the Board] would accept the first completed application they received and acknowledging [sic] the other request he would like to establish a Display Policy Committee after the first of the year and formalize a written display policy for the future.<sup>1</sup>

Although the minutes indicate that the Board approved "the first completed application" during the meeting, it is clear that the approval for the display came well before the Special Meeting of the Board of Selectmen took place. An article published by the NewsTimes at 5:06 pm on November 13 (prior to the start of the Special Meeting) provides details of the event marking the installation of the new nativity scene.<sup>2</sup> Those details include the fact that "First Selectman Matt

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<sup>1</sup> Minutes of Special Meeting, Board of Selectmen, at \*4, Nov. 13, 2018.

<sup>2</sup> Julia Perkins, Bethel to dedicate new nativity display, NewsTimes, 5:06 pm, Nov. 13, 2018, <https://www.newstimes.com/local/article/Bethel-to-dedicate-new-nativity-display-13389096.php>.

Knickerbocker will speak” at the event and that “P. T. Barnum Square will be closed on one side during the event.”<sup>3</sup> These details could not have been known or confirmed at the time of publication if the application to even install the nativity scene in the first place had yet to be approved.

To reiterate, it appears that well before the Special Meeting of the Board of Selectmen took place, First Selectman Knickerbocker agreed to participate in the nativity scene event and arrangements were made to close off one side of P.T. Barnum Square. Then, at the Special Meeting, the Board of Selectmen—and Mr. Knickerbocker in particular—decided to “accept” the application for the nativity scene but deny the remaining applications “due to concerns with the limited space.”

Based on this information, it appears that the Parks and Recreation Department continue to subject holiday displays to different criteria and procedures based on the religious viewpoint of the proposed displays. Such disparate treatment would constitute viewpoint discrimination in violation of the Free Speech Clause of the First Amendment.<sup>4</sup> It also subjects Bethel residents to disparate treatment based on their individual religious identity (a suspect classification) in violation of the Equal Protection Clause of the Fourteenth Amendment<sup>5</sup> and Article I, §20 of the Connecticut Constitution. Furthermore, the Board of Selectmen engaged in viewpoint discrimination by instituting an *ad hoc*, retroactive policy in order to permit the favored religious holiday display while denying all other applications.<sup>6</sup> These actions also evidence an institutional preference toward residents espousing one religious viewpoint, which violates the Establishment Clause.<sup>7</sup>

In our prior conversation, you indicated that you generally refer to the Anti-Defamation League’s Quick Guide to Displays for the December Holidays<sup>8</sup> (the ADL Guide) when advising the town on the issue of religious displays. The ADL Guide indicates that a lone nativity or other religious display in an open public space (such as P.T. Barnum Square) is “acceptable only if privately placed and [accompanied by a] disclaimer ensuring that viewers know that the government did not place or endorse the display.” The ADL Guide assumes that such a disclaimer is *actually true*. In this case, such a disclaimer would not be accurate. The Parks and Recreation Department and the Board of Selectmen have, by their actions, endorsed the new nativity display to the exclusion of all others.

The American Atheists Legal Center (AALC) asks that the Board of Selectmen rescind the decision to approve the nativity while denying all remaining applications for the 2018 holiday season and instead seek a solution to the problem of limited space in P.T. Barnum Square that does not unlawfully discriminate between Bethel residents on the basis of their religious identity. The AALC would also like to offer the Board of Selectmen (and the soon-to-be-established

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<sup>3</sup> *Id.*

<sup>4</sup> *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828-29 (1995).

<sup>5</sup> *New Orleans v. Dukes*, 427 U.S. 297, 303 (1976)

<sup>6</sup> *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828-29 (1995).

<sup>7</sup> *McCreary County v. ACLU*, 545 U.S. 844, 864-65 (2005); *Lee v. Weisman*, 505 U.S. 577, 610 (1992); *Everson v. Bd. of Educ.*, 330 U.S. 1, 15-16 (1947).

<sup>8</sup> ADL’s Quick Guide to Displays for the December Holidays, ADL Midwest, Nov. 18, 2013, <https://chicago.adl.org/adls-quick-guide-to-displays-for-the-december-holidays/>

Display Policy Committee) its assistance in developing an equitable policy to govern the installation of temporary displays on town property in the future and develop methods to ensure that the policy is properly applied by the Parks and Recreation Department.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Blackwell', written over a light gray rectangular background.

Geoffrey T. Blackwell, Esq.  
Litigation Counsel  
American Atheist Legal Center  
legal@atheists.org



# AMERICAN ATHEISTS

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November 28, 2017

*Via Cert. Mail & Email*

Martin J. Lawlor, Jr.  
99 Greenwood Avenue  
Bethel, CT 06801

Dear Mr. Lawlor,

A Bethel resident recently informed me that there was a change regarding the installation of the nativity scene I discussed in my letter dated October 20, 2017 (attached). While the display was scheduled to be erected on property owned by a local church, it appears that plan was changed on November 14, after “a 30 sec[ond] conversation with [First Selectman] Matthew Knickerbocker.”<sup>1</sup> The display has now been installed on P.T. Barnum Square. Apparently a conversation with Selectman Knickerbocker was all that was needed in order for a religious display to be installed on city property.

Several Bethel residents are willing to apply for authorization to erect a non-religious display on P.T. Barnum Square. In response to a request, Director Earle of the Parks and Recreation Department provided me with the attached “Application for community use of Parks and Recreation Municipal Center Facilities” so that I could assist the residents in navigating the process. According the application and attached rules, the form must be submitted at least two weeks before the display would be installed and requires a certificate of liability insurance. American Atheists will assist the Bethel residents in meeting these requirements and submitting the application.

Regardless of whether the Parks and Recreation Department approves that application, the AALC is concerned that residents wishing to erect a non-religious display must adhere to the Parks and Recreation Department’s procedures while residents wishing to install a religious display were permitted to proceed with the installation of their display on the mere say-so of a single selectman. These circumstances strongly suggest that Bethel residents are being subjected to disparate treatment based on the points of view expressed by their respective displays, which could amount to a violation of the residents’ freedom of speech. In addition, the implication that the disparate treatment is

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<sup>1</sup> Tim Martin (timjmjr), Facebook (Nov. 14, 2017, 9:41 PM), <https://www.facebook.com/groups/615946511795955> (Enter “Josh Adams” in “Search this group” form; then use the “Choose a date...” hyperlink to specify “Nov 2017” and locate the post by Josh Adams dated “12 November at 20:37”).

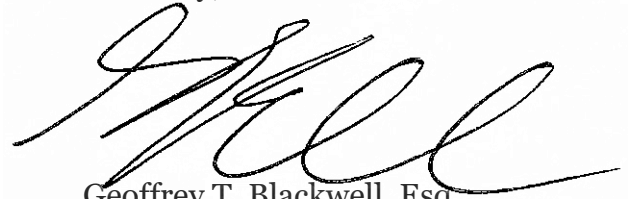
the result of the residents' differing views about religion raises Equal Protection and Establishment Clause concerns.

These issues could be avoided in the future by ensuring that all residents follow the Parks and Recreation Department's established procedure when obtaining authorization to erect temporary displays on public property. Please inform me of the steps the city intends to take to ensure that all residents are given equal access to public facilities.

If the city does not take steps to ensure that all its residents have equal access to public facilities, American Atheists is prepared to assist its Bethel supporters in pursuing judicial remedies for the violations described above. Enclosed with this letter is a Data Preservation Notice requesting that the Town of Bethel refrain from destroying, altering, or otherwise disposing of potentially relevant materials.

Thank you again for your time and assistance in this matter.

Sincerely,

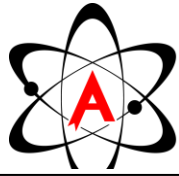
A handwritten signature in black ink, appearing to read 'G. Blackwell', written over a light gray rectangular background.

Geoffrey T. Blackwell, Esq.

Staff Attorney

American Atheist Legal Center

[legal@atheists.org](mailto:legal@atheists.org)



# AMERICAN ATHEISTS

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October 20, 2017

*Via Cert. Mail & Email*

Lisa Bergh, CCTC  
Clifford J. Hurgin Municipal Center  
1 School St.  
Bethel, CT 06801

Dear Ms. Bergh,

The American Atheists Legal Center (AALC) recently received an inquiry from a Bethel resident, about the annual nativity scene on display on the lawn of the Clifford J. Hurgin Municipal Center. According to the resident, the Town of Bethel permits the local Chamber of Commerce to erect the nativity scene. I write to inquire about the policy permitting third parties to erect temporary displays on public property and the steps the resident would need to take to place a similar display on the grounds of the municipal center.

The AALC is part of American Atheists, Inc., a national nonprofit organization dedicated to the separation of religion and government and the equality of atheists. American Atheists is based in Cranford, New Jersey, and has more than 350,000 members and supporters across the country, including in Bethel, CT.

Our supporter would like to know what procedure must be followed in order to place a display on the lawn of the municipal center. Please describe the procedure or provide a copy of the policy so I can provide it to the Bethel resident. I respectfully request a response via email to the address below within five business days.

Thank you for your time and attention to this matter.

Sincerely,

Geoffrey T. Blackwell, Esq.  
Staff Attorney  
American Atheist Legal Center  
legal@atheists.org

# BETHEL PARKS & RECREATION

1 SCHOOL STREET BETHEL CT 06801  
Phone: 203-794-8531 Fax: 778-7519

## Application for community use of Parks and Recreation MUNICIPAL CENTER FACILITIES

*To be submitted to Parks & Recreation Director*

Name of Organization: \_\_\_\_\_

Individual Submitting Request: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Address: \_\_\_\_\_ Town: \_\_\_\_\_ State: \_\_\_\_\_

Home phone: \_\_\_\_\_ Cell#: \_\_\_\_\_ E-mail: \_\_\_\_\_

Purpose of Use: Meeting: \_\_\_\_\_ Game: \_\_\_\_\_ Practice: \_\_\_\_\_ Tournament: \_\_\_\_\_ Fair: \_\_\_\_\_  
CPR Class: \_\_\_\_\_ Special Event: \_\_\_\_\_ Car Wash: \_\_\_\_\_ Other: \_\_\_\_\_

Event name: \_\_\_\_\_

Is activity open to general public? \_\_\_\_\_ Admission being charged? \_\_\_\_\_ Estimated Attendance: \_\_\_\_\_

RENTAL Date Requested: \_\_\_\_\_

Time setting up: \_\_\_\_\_ Time of Event: \_\_\_\_\_ to \_\_\_\_\_ Cleanup time: \_\_\_\_\_

G. P. Room		Whole Gym		Senior Center Cafe		Front Lawn	
Stage		Front ½ Gym		Senior Center Kitchen		Gazebo	
		Back ½ Gym		Back Parking Lot		**Car Wash Area	

Utilities Required: Electricity: \_\_\_\_\_ Other: (please specify) \_\_\_\_\_

Equipment Needed: \_\_\_\_\_

**\*\* Policies and Regulations for CAR WASH: You are responsible for your own supplies. Only use Biodegradable soap. All garbage must be removed and the area left in tidy condition.**

### SCHEDULE OF EVENTS MUST BE RECEIVED BEFORE APPROVAL OF APPLICATION

CERTIFICATE OF LIABILITY INSURANCE in the amount of \$1,000,000. Required: Yes \_\_\_ No \_\_\_

*I/we have read the policies and regulations promulgated by Bethel Parks and Recreation regarding the community use of the Parks and Recreation facilities and, as duly authorized agent for this organization, I/we agree to abide by them.*

\_\_\_\_\_  
*Date of Application*

\_\_\_\_\_  
*Signature of Applicant*

Schedule of Events Received \_\_\_\_\_yes \_\_\_\_\_no  
Certificate of Liability Insurance Received \_\_\_\_\_yes \_\_\_\_\_no  
Rental Fee: \_\_\_\_\_ Date Received \_\_\_\_\_ Check # \_\_\_\_\_ Cash \_\_\_\_\_

*Facility available on above date* \_\_\_\_\_yes \_\_\_\_\_no  
*Permission to use equipment* \_\_\_\_\_yes \_\_\_\_\_no  
*Police required for activity* \_\_\_\_\_yes \_\_\_\_\_no  
*Space has been reserved* \_\_\_\_\_yes \_\_\_\_\_no

Application : APPROVED \_\_\_\_\_ DISAPPROVED \_\_\_\_\_ Fee waived: \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Signature of Park & Rec. Director*

# BETHEL PARKS & RECREATION RULES/REGULATIONS

## For use of: Municipal Center Gym, G.P. Room, Activity Room and Senior Center Cafeteria

1. Request must be made at least two weeks prior to Activity. Yearly applications will only be accepted for September-June. You must make a new application if you require Summer meeting.
2. The hours you put down for start and end time MUST be adhered too. For every ½ hour over your organization will be charged \$15.00 (this includes non-profits). If you need to change the time on your form you MUST inform the office a minimum of 1 week in advance. With less than 1 weeks notice, you will be charged \$15.00 for every ½ hour over your original time.  
Please understand that this policy is in place as staff is scheduled for the office.
3. **Must provide a Certificate of Liability Insurance in an amount of \$1,000,000 for each occurrence and \$1,000,000 in the aggregate providing bodily injury and property damage coverage naming the Town of Bethel as an additional insured and hold harmless the Town of Bethel, the Parks and Recreation Department and the Parks & Recreation Commission from liability, property damage arising out of your use of the Town's facilities.**
4. Sponsor activities must have 50% of participants be Bethel residents.
5. No Alcoholic beverages.
6. A \$25.00 per hour fee will be charged for use of building plus an additional \$200.00 security deposit. Bethel non-profits will not be charged a fee.
7. Sponsors are directly responsible for the building and will be charged for any damage that occurs during the event.
8. Some usage will require police officers in attendance. Please contact the Police Department to make arrangements.
9. Participants must **wear sneakers** in the gym areas. **The Gym wall and bleachers may only be open/closed by Parks and Recreation staff.**
9. General Purpose Room: **Please return all chairs to the chair rack.**  
Return all other chairs to the rooms you took them from, DO NOT PLACE ON CHAIR RACK.
10. Groups will confine themselves to the area designated for their use only. Children are not allowed in the building without supervision. All other areas of the building are strictly off limits. This includes closets within the rooms you are using.
11. All areas must be cleaned and left the way they were found. If you require cleaning equipment please ask the Park and Rec. staff.