



**AMERICAN ATHEISTS
LEGAL CENTER**

718 7th Street NW, Washington DC 20001

May 22, 2019

Via Regular Mail

Polly Trottenberg, Commissioner
New York City Department of Transportation
55 Water St.
New York City, NY 10041

Re: 77th Precinct and the Co-Cathedral of St. Joseph; FOIL records request

Dear Commissioner Trottenberg:

A resident of Prospect Heights recently contacted the American Atheists Legal Center (AALC) to report that the Co-Cathedral of St. Joseph (the Cathedral) and the Roman Catholic Diocese of Brooklyn (collectively, the Catholic Church) regularly enlists the help of the NYPD's 77th Precinct to close nearby streets and relocate residents' vehicles to accommodate parking for events that the Catholic Church anticipates will draw a large number of attendees.

It appears that no permits have been issued to authorize these street closures and changes to posted parking rules. The AALC has been unable to identify any state or local statute, ordinance, rule, or regulation that provides for a valid permit authorizing the NYPD to close streets and restrict parking for private, indoor events.

Under the administrative code of the city of New York, the Department of Transportation (DOT) is responsible for overseeing parking rules and restrictions on the city's streets¹ and authorizing the temporary closure of those streets.² If the DOT is providing special privileges or services to, or knowingly refraining from exercising its enforcement authority with regard to, the Catholic Church, or to any other house of worship or religious organization, it is doing so in violation of the Establishment Clause of the First Amendment to the U.S. Constitution, and the DOT should take steps to prevent such violations from occurring.

The AALC is part of American Atheists, Inc., a national nonprofit organization dedicated to the separation of religion and government, and elevating atheists and atheism in our nation's public and political discourse. American Atheists is based in Cranford, New Jersey, and has more than 350,000 members and supporters across the country, including in New York City.

In the attached letter, dated May 16, 2019, and distributed to residents of Prospect Heights, Rev. Msgr. Kieran E. Harrington indicated that the Cathedral will be hosting events on May 25th and June 1st on behalf of the Roman Catholic Diocese of Brooklyn, stating as follows:

"To accommodate these events, the NYPD's 77th Precinct will be closing Pacific Street and Dean Street between Vanderbilt Avenue and Underhill Avenue from 9

¹ § 19-162, *et seq.*, § 19-200, *et seq.*

² § 19-107.

AM through 2 PM on each of these dates. They will also close portions of Underhill Avenue and Pacific Street near Lowry Triangle where they meet Atlantic Avenue and Washington Avenue.

As usual, we will post signs in advance to indicate where no cars will be permitted to park for those Saturdays. Please note that any vehicles remaining on the street will be relocated to a nearby street by the NYPD's parking detail."

The Cathedral previously enlisted the help of the 77th Precinct to close substantially the same streets on April 16th³ as well as on numerous dates in previous years.

Parking in Prospect Heights, and indeed throughout Brooklyn and the rest of New York City, is at a premium. Making alternate arrangements for parking (or finding a vehicle after it has been unceremoniously "relocated" to some unknown parking spot) can create a substantial hardship for area businesses and residents. Residents and businesses alike would undoubtedly love to be able to simply walk into their local NYPD precinct and leave with a bundle of "No Parking" signs and a commitment that certain streets and intersections will be closed to traffic at times that suit them. The NYPD was reminded of this fact all too recently when it sparked an uproar by posting "No Parking" signs in the vicinity of Columbia University in order to accommodate an NYPD flag football game.⁴

However, granting the street closure requests of every entity that comes asking is no way to run a city, and the New York City Mayor's Office of Citywide Event Coordination and Management (OCECM) therefore provides an application process by which a number of permits are made available for events that may obstruct the city's streets or sidewalks.⁵ Likewise, the NYPD has established an application process for parade permits.⁶ There is no provision, however, for a private entity to block off streets or spaces for their own use simply because they expect a large number of visitors on a particular day.⁷

Based on publicly available information, it appears that the 77th Precinct is closing streets and issuing "No Parking" signs to the Cathedral without any legal authorization to do so. A review of the NYC Street Closures system⁸ lists no permitted event closures corresponding to the blocks and dates mentioned in the Cathedral's letter.⁹ One of the permits provided by the OCECM

³ See attached letter dated March 20, 2019.

⁴ Stephanie Pagonis et al., *NYPD towed parked cars to free up spaces for its flag-football game*, N.Y. Post (Mar. 5, 2019, 10:39 pm), <https://nypost.com/2019/03/05/nypd-towed-parked-cars-to-free-up-spaces-for-its-flag-football-game/>.

⁵ *Street Activity Permit Office*, New York City Mayor's Office of Citywide Event Coordination and Management, <https://www1.nyc.gov/site/cecm/about/sapo.page> (last visited May 22, 2019).

⁶ *Parade and Sound Permits*, NYPD, <https://www1.nyc.gov/site/nypd/services/law-enforcement/permits-licenses-permits.page> (last visited May 22, 2019).

⁷ Pagonis et al., *supra* note 4. "A de Blasio administration official said there's no law or regulation that allows parking spots to be blocked off for private use, saying: 'Parking is first-come, first-served — this is New York.'"

⁸ NYC Street Closures, <http://maps.nyc.gov/streetclosure/> (last visited May 22, 2019).

⁹ Only one company, CT Steel, Inc. has been issued a "temporary closing of roadway" permit (Permit # 0211) applicable to any of the streets and dates identified in the Cathedral's letter, but that permit is limited to Pacific St. between Vanderbilt Ave. and Underhill Ave. and is subject to strict conditions under 34 RCNY § 2-05.

applies specifically to “acts of public worship,”¹⁰ but it appears that either the Catholic Church never bothered to avail itself of this accommodation by the city or, if it did attempt to do so, it was not able to meet the requirements for such a permit.¹¹

If the DOT played an active role in NYPD giving the Catholic Church privileged access to the city’s streets, or was aware of these actions and took no steps to rectify the situation, then the DOT is complicit in, and may be held liable for, permitting these private entities to use the imprimatur of the NYPD to bully residents off a public street that they have every right to access. Providing these benefits to the Catholic Church without first requiring it to obtain the same permits required of all other entities, *including other religious entities*, is a violation of the Establishment Clause of the First Amendment.

If the Establishment Clause means anything, it “means at least this: Neither a state nor the Federal Government can . . . pass laws which aid one religion, aid all religions, or prefer one religion over another.”¹² Government policies and practices which show a denominational preference are subject to strict scrutiny by the courts and are only justified where they are narrowly tailored to further a compelling governmental interest.¹³ Furthermore, any government act which serves no secular purpose, advances a particular sect, or creates an excessive entanglement between the government and religion also will not withstand judicial scrutiny.¹⁴

Repeatedly affording the Catholic Church special access to the resources of the DOT and NYPD serves no compelling governmental interest. It does not even serve the government’s interest in accommodating the free exercise of religion, since New York City already provides permits for religious events. Even if some heretofore unknown compelling interest were served by this practice, allowing the Catholic Church to place a substantial burden on area residents to find alternate parking, in a neighborhood where parking is already incredibly hard to come by, would in no way be narrowly tailored to achieve it.

Likewise, any active participation in, or knowing acquiescence to, the 77th Precinct’s practice of closing streets and issuing “No Parking” signs at the behest of the Cathedral—which has not bothered (or was not able) to go through the normal application process—serves no secular purpose, advances the interests of the Catholic Church over the other entities (religious and secular) that took care to go through the proper permitting process, and fosters an excessive entanglement between the police and the Church, placing police parking details at the beck and call of the Cathedral in order to remove vehicles that are not there for church purposes.

¹⁰ *Permit Types: Religious Events*, New York City Mayor’s Office of Citywide Event Coordination and Management, <https://www1.nyc.gov/site/cecm/permitting/permit-types/religious-events.page> (last visited May 22, 2019).

¹¹ Many, if not all, of the events organized by the Catholic Church, both those already held and those currently planned, do not appear to qualify for such a permit since the nearly all of the events were held indoors, the Catholic Church neither sought nor obtained the permission of the Cathedral’s neighbors, and the Catholic Church sought to close more than the single block allowed under the terms of the “Religious Events” permit.

¹² *Everson v. Bd. of Educ.*, 330 U.S. 1, 15 (1947); *Zorach v. Clauson*, 343 U.S. 306, 314 (1952); *Abington School District v. Schempp*, 374 U.S. 203, 225 (1963); *Epperson v. Arkansas*, 393 U.S. 97, 104-06 (1968); *Larson v. Valente*, 456 U.S. 228, 246 (1982); *Bd. of Educ. v. Grumet*, 512 U.S. 687, 704-05 (1994); *Van Orden v. Perry*, 545 U.S. 677, 698 (2005); *McCreary County v. ACLU*, 545 U.S. 844, 860 (2005).

¹³ *Larson*, 456 U.S. at 246-47.

¹⁴ *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971).

The AALC respectfully requests that the DOT take steps to ensure that no religious organization is receiving privileged access to or exemption from the tools at DOT's disposal to regulate traffic on the city's streets. The residents, businesses, and visitors to Prospect Heights should not be subjected to the repeated disruption of their day-to-day lives simply because churchgoers in their neighborhood are unable or unwilling to do what each and every one of their neighbors must: opt for public transit or suffer the hell of finding a convenient parking space on the streets of New York.

Records Request

Pursuant to the New York Freedom of Information Law,¹⁵ the AALC has submitted the following requests for public records through Open Records portal provided by the city.

1. All emails, faxes, letters, and other written correspondence sent or received on or after Jan 1, 2017, between the DOT and any or all of the following entities:
 - a. Kieran E. Harrington;
 - b. The Co-Cathedral of St. Joseph; and/or
 - c. The Roman Catholic Diocese of Brooklyn;
2. All emails, faxes, letters, and other written correspondence sent or received on or after Jan 1, 2017, between the DOT and either or both the NYPD or the New York City Mayor's Office of Citywide Event Coordination and Management that mention:
 - a. Kieran E. Harrington;
 - b. The Co-Cathedral of St. Joseph; or
 - c. The Roman Catholic Diocese of Brooklyn;
3. All requests or applications requesting the closure of any street or sidewalk submitted to the DOT on or after Jan 1, 2017, by any or all of the following entities:
 - a. Kieran E. Harrington;
 - b. The Co-Cathedral of St. Joseph; or
 - c. The Roman Catholic Diocese of Brooklyn;
4. All records of vehicles relocated or towed from Pacific St., Dean St., Vanderbilt Ave., and Underhill Ave. on April 16, 2019, including any fees, fines, or other costs paid by the owners of each vehicle;
5. All permits issued by the DOT on or after January 1, 2017, to any or all of the following entities:
 - a. Kieran E. Harrington;
 - b. The Co-Cathedral of St. Joseph; or
 - c. The Roman Catholic Diocese of Brooklyn;
6. All permits provided to the DOT on or after January 1, 2017, by any or all of the following entities:
 - a. Kieran E. Harrington;

¹⁵ N.Y. Pub. Off. Law § 84, *et seq.*

- b. The Co-Cathedral of St. Joseph; or
 - c. The Roman Catholic Diocese of Brooklyn;
7. All memoranda, rules, instructions, procedures, advisories, training materials, or other guidance currently provided by the DOT to its officers, employees, and the general public regarding requests to close streets or sidewalks.

Thank you for your time and attention to this matter. If you have any questions or concerns about the issues or requests contained in this letter, please do not hesitate to contact me.

Sincerely,



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

Cc: Bill de Blasio, Mayor, New York City (*via reg. mail*)
Eric L. Adams, President, Brooklyn Borough (*via reg. mail*)
Philip Damashek, General Counsel, DOT (*via fax: (212) 839-9685*)

The Co-Cathedral of Saint Joseph

The Rev. Msgr. Kieran E. Harrington
Rector

March 20, 2019

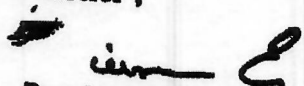
Dear Neighbors,

The Co-Cathedral of Saint Joseph often serves as the seat of the Roman Catholic Diocese of Brooklyn and is the host site of large events every year.

Tuesday, April 16, 2019, will mark our annual Chrism Mass and will involve some 1,000 congregants. To accommodate and prepare for the event, the NYPD's 77th Precinct will be closing several streets in the area to traffic starting at 6 PM on that day. These will include parts of Pacific Street, Vanderbilt Avenue, Dean Street, and Underhill Avenue. Signs will be posted in the area indicating the day and time for when cars must be moved by their owners. Please note that any vehicles remaining on the street will be relocated to a nearby street by the NYPD's parking detail.

If you have any questions, please feel free to contact the 77th Precinct.

I am sorry for the inconvenience and thank you very much for your patience and continued cooperation.

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Rev. Msgr. Kieran Harrington to
Rector

The Co-Cathedral of Saint Joseph

May 16, 2019

Dear Neighbors,

Soon, the Co-Cathedral of Saint Joseph will host another two large events for the Roman Catholic Diocese of Brooklyn:

- On Saturday, May 25, 2019, at 11 AM, we will celebrate our Diaconate Ordination. We expect more than 1,000 guests.
- On Saturday, June 1, 2019, at 11 AM, we will celebrate our Priesthood Ordination. We expect more than 1,500 guests.

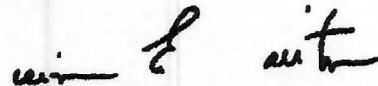
To accommodate these events, the NYPD's 77th Precinct will be closing Pacific Street and Dean Street between Vanderbilt Avenue and Underhill Avenue from 9 AM through 2 PM on each of these dates. They will also close portions of Underhill Avenue and Pacific Street near Lowry Triangle where they meet Atlantic Avenue and Washington Avenue.

As usual, we will post signs in advance to indicate where no cars will be permitted to park for those Saturdays. Please note that any vehicles remaining on the street will be relocated to a nearby street by the NYPD's parking detail.

If you have any questions, please feel free to contact the 77th Precinct.

I am sorry for the inconvenience and thank you very much for your patience and continued cooperation.

Sincerely,



Rev. Msgr. Kieran E. Hingto
Rector