



Frequently Asked Questions

Why is Toms River being sued by the Federal Government for violating RLUIPA?

RLUIPA - [What is it?](#)

RLUIPA stands for the Religious Land Use and Institutionalized Persons Act. It is a federal statute that prohibits local governments from enacting zoning and land use regulations that:

- (1) treat churches or other religious assemblies or institutions on less than equal terms with nonreligious assemblies or institutions;
- (2) discriminate against any assemblies or institutions on the basis of religion or religious denomination;
- (3) totally exclude religious assemblies from a jurisdiction; or
- (4) unreasonably limit religious assemblies, institutions, or structures within a jurisdiction.

Why is it relevant in Toms River?

In December of 2018, the [Department of Justice \(DOJ\) opened an investigation](#) into Toms River's zoning and land use ordinances pertaining to churches and houses of worship. This investigation focused on certain zoning changes enacted in 2017 that the DOJ was concerned violated RLUIPA.

What was the zoning change?

In 6 out of the total 57 zoning districts in the Township, churches and houses of worship are considered "conditional uses" - meaning that they must satisfy certain conditions to locate in these areas. One of those conditions is a minimum lot size. From the late 1970s until 2017, the minimum lot size requirement was 2 acres. In 2017, that requirement was increased to 10 acres in conditionally allowed zoning districts.

Mainly, it was this substantial “jump” from the historic 2 acres to the current 10 acres that triggered the DOJ’s investigation. Additionally, DOJ was concerned with an earlier zoning change that reduced the number of zoning districts in which houses of worship were conditionally allowed.

Where are we now?

[On September 17, 2020 the DOJ notified Toms River that the investigation was complete.](#) The notice advised the Township that then-United States Attorney General William Barr had authorized DOJ to file a federal lawsuit against the Township, alleging that the recent zoning changes unreasonably limited religious exercise, treated religious assemblies or institutions on less than equal terms with nonreligious assemblies or institutions, and substantially burdened religious exercise, in violation of RLUIPA.

How has the Township responded?

[On September 28, 2020, the Mayor and Council authorized](#) the Department of Law and special counsel to enter into pre-suit negotiations with DOJ.

Why has the Township agreed to negotiate with the DOJ?

An adverse outcome in a lawsuit with the DOJ could have drastic consequences for the Township. For example, recently, three New Jersey municipalities that either refused to negotiate, or compromised after going deep into litigation, were forced to pay millions of dollars in damages and attorneys’ fees. In 2019, Clifton paid \$2.5 million to settle an RLUIPA lawsuit. Two years earlier, Bernards Township paid a \$3.25 RLUIPA settlement. And in 2014, the Township of Bridgewater paid a \$7.75 million RLUIPA settlement – one of the largest such settlements in the nation.

There is a substantial risk that the zoning code could be rewritten by a federal court, significantly infringing on home rule. Additionally, if it did not prevail in the lawsuit, the Township would not only be subject to significant federal fines and penalties, but also responsible

for paying the other side's attorneys' fees, along with its own. Altogether, these damages could total in the tens of millions of dollars.

Negotiating with DOJ is the responsible course of action. It gives the Township the opportunity to resolve the matter without litigation, avoiding having to spend taxpayer dollars on a potentially astronomical damage award, while retaining a measure of local control over the zoning code.

Latest Update - February 2, 2020

The attorneys in the Department of Law, assisted by special counsel Professor Marci Hamilton of UPENN (one of the nation's leading RLUIPA experts), have been in negotiations with the DOJ to resolve this matter with the least amount of impact to the Toms River residents and taxpayers.

Toms River RLUIPA Lawsuit with DOJ Timeline

2017 - Zoning change is made based on advice by land use professionals at the time. Zoning changed certain areas from a two acre minimum to a ten acre minimum.

2018 - [DOJ launches investigation into Toms River zoning change.](#)

2019 - [Township puts forward proposal to DOJ decreasing the acreage from ten acres to seven acres.](#)

SEPTEMBER 17, 2020 - [DOJ notified Toms River the investigation was completed](#) and the DOJ would be filing a complaint against the Township. The complaint alleged the Township's Zoning Laws unreasonably limit religious exercise, treat religious assemblies or institutions on less than equal terms with nonreligious assemblies or institutions, and substantially burden religious exercise.

SEPTEMBER 28, 2020 - [Council authorizes negotiations to begin with DOJ to resolve the matter.](#)

FEBRUARY 2, 2021 - Toms River's attorneys and DOJ negotiating to resolve the matter.

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