



New Jersey Libertarian Party

Preempted Ordinance Repeal Project

John Paff, Chairman

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March 24, 2008

Hon. Joseph P. Heywang, Mayor, Members of the Borough Council
Borough of Butler
1 Ace Avenue
Butler, NJ 07405

(via fax only to 973-838-3762)

Dear Mayor Heywang and Council members:

I write, both individually and in my capacity as Chairman of the New Jersey Libertarian Party's Preempted Ordinance Repeal Project, seeking review and repeal of the parts of Chapter 155 of the Borough Code dealing with loitering.

Attached is a March 19, 2008 Suburban Trends article evidencing that West Milford Township is repealing its loitering ordinance.¹ Since Butlers's ordinance is practically identical to West Milford's it would follow that it is likewise invalid and ought to be repealed.

Would you please ask your attorney, Anthony Murphy, to review the loitering ordinance and render an opinion on its validity?

Thank you for your attention to this matter. I look forward to hearing from you.

Sincerely,

P.S. If you write to me during the next few weeks, kindly fax or email your correspondence as I will not be at the address above.

cc. Martin F. Murphy, Esq. , via fax only to 973-835-1732

¹ See <http://www.lpcnj.org/OGFT/WMLoiter.html> for more information

NORTH JERSEY

Libertarians successful in getting towns' loitering statutes removed

BY BRYAN LA PLACA
Staff Writer

It's a common occurrence in America: teenagers hanging around outside a convenience store, trading yuks, maybe swearing and smoking, and the cops coming to tell them to move it along... or else. But since anti-loitering laws are unconstitutional, police could wind up on the wrong end of a lawsuit if they try to enforce them.

Since 1999, when the Supreme Court of the United States declared anti-loitering laws unconstitutional, municipalities across the country have been repealing their respective anti-loitering ordinances. The Township of West Milford is set to repeal its own anti-loitering ordinance soon.

Municipalities across the nation passed anti-loitering laws in the mid-1970s as anti-loitering sentiment ran high, especially where teenagers were concerned. West Milford passed its own anti-loiter-

ing ordinance in 1976.

West Milford's law defines loitering as "any standing, standing around, lingering, lounging, sleeping, wandering, and, in the colloquial phrase, hanging around, or refusal to move away from any public place or quasi-public place when ordered so to do by any police officer of the township, when such loitering shall be contrary to the public safety, peace, property, welfare and good order of the township, or of the inhabitants thereof."

People who refuse a police order to leave could be found in violation of the local loitering ordinance. If they come back within three hours, they would still be in violation.

Some police are still unaware that anti-loitering laws have been unconstitutional for nine years.

In 1999, the Supreme Court of the United States struck down an anti-loitering law in Chicago, deeming it to be in violation of the First Amendment right to peace-

ably assemble.

"It was brought to our attention and it is true that the loitering ordinance that is presently on the books was struck down a number of years ago, and it's unconstitutional and essentially overboard, or vague," Fred Semrau, the West Milford Township attorney, told the Township Council on March 12. He asked the council members to consider repealing the local anti-loitering ordinance.

"The benefit to that is you're not faced with either having the municipal court deal with (loitering) if there is a violation, or an alleged violation. You can't really have a violation when the ordinance itself is unconstitutional," said Semrau.

He advised the council to pass the first reading of an ordinance to repeal the township's anti-loitering law at its March 26 meeting.

"I would wholeheartedly agree with his opinion," said West Milford Police Chief Paul Costello. "There's no point in having an

ordinance on the books if you can't enforce it, so I think a repeal would be appropriate."

The chief added that his department has not enforced the local anti-loitering ordinance in recent years.

Two-year effort

"The repeal is the result of a two-year effort by the New Jersey Libertarian Party (NJLP)," said John Paff, chairman of the New Jersey Libertarian Party's Preempted Ordinance Repeal Project.

"The Libertarian Party opposes this (anti-loitering) ordinance because it does not define a 'real crime,' for example, one where there is an identifiable victim," said Paff, "but rather provides police with a mechanism to arrest, harass or disperse persons whose presence they find objectionable."

Paff said the NJLP learned that the West Milford Municipal Court was allowing defendants charged with statutory offenses for conduct that was not even remotely related to loitering to plead "guilty" to the loitering ordinance instead to avoid harsher penalties associated with the statutory offenses.

In a March 6, 2006 letter, the Project asked former West Milford mayor Joseph Di Donato to repeal the township's invalid loitering ordinance but received no response. On Oct. 22, 2007, the Project wrote to West Milford Municipal Court Judge Joseph C. Perconti and informed him that the "downgrading" policy was in direct violation of a 1998 Attorney General directive and asked him to stop it. Again there was no response.

The Project wrote West Milford a third time when West Milford Mayor Bettina Bieri took office this year. She responded that the township council will repeal the local anti-loitering law.

Getting municipalities to repeal these invalid ordinances is often not as easy and straightforward as it may appear. The Project has found that elected municipal officials sometimes know, or at least suspect, that some of their ordinances are invalid but are afraid to question them lest they be regarded as "soft on crime," said Paff.

"Or, perhaps, more insidiously, they wish to keep these ordinances on the books so that the local police can use them to harass those who have committed no actual crime, but who, by their very presence, cause the police or other people to feel uneasy," Paff said.

All of these detailed letters can be viewed online at lpcnj.org/OGTF/WMLoiter.html.

The state Libertarians' project seeks to get New Jersey municipalities to repeal loitering, vagrancy and other municipal ordinances that should have been, but were not, repealed when the New Jersey Code of Criminal Justice was enacted in 1979. The Project has succeeded in bringing about the repeal of loitering ordinances in Flemington and Highland Park, and it assisted in having one repealed in Elmwood Park, said Paff.

Bryan La Placa's e-mail address is laplaca@northjersey.com.

Subject: Borough of Butler - Loitering ordinance Repeal
From: "Robert H. Oostdyk" <roberto@johnsonmurphylaw.com>
To: <lpsmc@pobox.com>
Cc: <cashley@butlerborough.com>

Dear Mr. Paff,

The Borough Council of the Borough of Butler reviewed your March 24, 2008 correspondance concerning Chapter 155 of the Revised General ordinances and authorized the preparation of an ordinance to repeal this Chapter. A copy of the proposed ordinance to that effect is attached for your information and will be introduced at the April 15, 2008 meeting. Thank you for your interest in the Borough and its ordinances.

Robert Oostdyk
Borough Attorney



[butler177.ord.doc](#)

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BOROUGH OF BUTLER

ORDINANCE NO. 2008 -

ORDINANCE REPEALING CHAPTER 155 OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF BUTLER

WHEREAS, Chapter 155 of the Revised General Ordinances of the Borough of Butler entitled "Loitering" prohibits certain activities commonly referred to as "loitering." and;

WHEREAS, Loitering ordinances, like the ordinance contained in Chapter 155 of the Revised General Ordinances of the Borough of Butler, were declared invalid by the New Jersey Supreme Court in State v. Crawley, 90 N.J. 241 (1982) and;

WHEREAS, The Court invalidated municipal loitering ordinances based on the fact that the New Jersey Code of Criminal Justice had contained a prohibition on loitering which was repealed by the State Legislature; and

WHEREAS, This ordinance has not been enforced and was rendered irrelevant by the Court decision.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Butler, County of Morris and State of New Jersey, as follows:

Section 1. Chapter 155 of the Revised General Ordinance of the Borough of Butler, entitled "Loitering" shall be and is hereby repealed in its entirety.

Section 2. If any section or provision of this Ordinance shall be held invalid in any Court of competent jurisdiction, the same shall not affect the other sections or provisions of this Ordinance, except so far as the section or provision so declared invalid shall be inseparable from the remainder or any portion thereof.

Section 3. All Ordinances or parts of Ordinances which are inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 4. This Ordinance shall take effect immediately after final passage and publication in the manner provided by law.

Adopted this ____ day of
_____, 2008.

Carol Ashley, Borough Clerk

Joseph P. Heywang, Mayor

§ 155-1

LOITERING

§ 155-1

Chapter 155

LOITERING

- § 155-1. Definitions.
- § 155-2. Certain types of loitering prohibited.
- § 155-3. Authority of police officer.
- § 155-4. Parental knowledge.
- § 155-5. Notification of violation.
- § 155-6. Presumption.
- § 155-7. Violations and penalties.

[HISTORY: Adopted by the Mayor and Council of the Borough of Butler as Section 3-1 of the Revised General Ordinances of 1976. Section 155-7 amended at time of adoption of Code; see Ch. 1, General Provisions, Art. II. Other amendments noted where applicable.]

GENERAL REFERENCES

Alcoholic beverages — See Ch. 67.
Noise — See Ch. 100.
Parks and recreation areas — See Ch. 168.

§ 155-1. Definitions.

As used in this chapter, the following words shall have the meanings indicated:

LOITERING — Remaining idle in essentially one (1) location, and shall include the concepts of spending time idly, loafing or walking about aimlessly, and shall include also the colloquial expression "hanging around."

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§ 155-3

PARENT or GUARDIAN — Shall include any adult person having care or custody of a minor, whether by reason of blood relationship, the order of any court or otherwise.

PUBLIC PLACE — Any place to which the public has access and shall include any street, highway, road, alley or sidewalk. It shall so also include the front or the neighborhood of any store, shop, restaurant, tavern or other place of business, and public grounds, areas, parks, as well as parking lots or other vacant private property not owned by or under the control of the person charged with violating the provisions of this section, or in case of a minor, not owned or under the control of his parent or guardian.

§ 155-2. Certain types of loitering prohibited.

No person shall loiter in a public place in such manner as to:

- A. Create or cause to be created a danger of a breach of the peace.
- B. Create or cause to be created any disturbance or annoyance to the comfort and repose of any person.
- C. Obstruct the free passage of pedestrians or vehicles.
- D. Obstruct, molest or interfere with any person lawfully in any public place as defined in § 155-1. This subsection shall include the making of unsolicited remarks of an offensive, disgusting or insulting nature or which are calculated to annoy or disturb the person to, or in whose hearing, they are made.

§ 155-3. Authority of police officer.

Whenever any police officer shall, in the exercise of reasonable judgment, decide that the presence of any person in any public place is causing or is likely to cause any of the conditions enumerated in § 155-2, he may, if he deems it necessary for the

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preservation of the public peace and safety, order that person to leave that place. Any person who shall refuse to leave after being ordered to do so by a police officer shall be guilty of a violation of the provisions of this chapter.

§ 155-4. Parental knowledge.

No parent or guardian of a minor under the age of eighteen (18) years shall knowingly permit that minor to loiter in violation of this chapter.

§ 155-5. Notification of violation.

Whenever any minor under the age of eighteen (18) years of age is charged with a violation of the provisions of this chapter, his parent or guardian shall be notified of this fact by the Chief of Police or any other person designated by him to give such notice.

§ 155-6. Presumption.

If at any time within thirty (30) days following the giving of notice as provided in § 155-5, the minor to whom such notice relates again violates the provisions of this section, it shall be presumed, in the absence of evidence to the contrary, that the minor did so with the knowledge and permission of his parent or guardian.

§ 155-7. Violations and penalties.¹

- A. Maximum penalty. For violation of any provision of this chapter, the maximum penalty shall, upon conviction thereof before the borough recorder or other judge authorized to hear and determine the matter, be a fine not exceeding five hundred dollars (\$500.), or imprisonment in the county jail or borough lockup for a period not ex-

¹ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. II.

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ceeding ninety (90) days, or both, in the discretion of the recorder or Municipal Judge.

- B. Separate violations. Except as otherwise provided, each and every day in which a violation of any provision of this chapter exists shall constitute a separate violation.