



# New Jersey Libertarian Party

Preempted Ordinance Repeal Project

*John Paff, Chairman*

*P.O. Box 5424*

*Somerset, NJ 08875-5424*

*Phone: 732-873-1251- Fax: 908-325-0129*

*Email: [lpsmc@pobox.com](mailto:lpsmc@pobox.com)*

April 5, 2008

Hon. Joseph Stellwag, Mayor, Members of the Township Council  
Township of Delran  
900 Chester Avenue,  
Delran, NJ 08075-9703

*(via email only to [jeggers@delrantownship.org](mailto:jeggers@delrantownship.org))*

Dear Mayor Stellwag 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 § 235-3 of the Township Code. That provision reads:

***§ 235-3. Public intoxication; public offensive language; obstruction of public passage; fighting and violent behavior***

*A. No person, while being under the influence of intoxicating liquors, shall loiter or assemble on the streets, at the street corners or in or upon the public places of the Township, or on private property not his or her own.*

*B. No person, on any street, at any street corner or in any public place, or any railroad train or other public conveyance within the Township, shall indulge in and utter loud, offensive or indecent language, or address or make audible any offensive remarks or comments upon any persons passing along such streets or public places or in any such railroad train or other public conveyance.*

*C. No person shall obstruct or interfere with any person lawfully being in and upon any street or public place or any train or other public conveyance within the Township.*

*D. No person shall engage in fighting or threatening or in violent or tumultuous behavior or create a hazardous or physically dangerous condition by his or her behavior on any public street or private property within the Township of Delran.*


We ask that you please request Township Attorney Brian M. Guest to review § 235-3 in light of State v. Paserchia, 356 N.J. Super. 461 (App.Div.2003). On page 466, the Appellate Division found that N.J.S.A. 2C:33 “reveals a policy to comprehensively address street behavior and other conduct in public places which may disturb citizens and disrupt peaceful society.” The Legislature, recognizing the tension between controlling “street behavior” and citizens’ free speech and assembly rights, decided to regulate “street behavior” so comprehensively that there was no room left for local regulation of the same conduct.

Take for example, § 235-3C’s prohibition against “obstruct[ing] or interfer[ing]” with people on the public streets. This provision could be stretched into prohibiting peaceful citizens from assembling in front of a local government building to protest against taxes or upon some other public issue. That ordinance’s statutory counterpart—N.J.S.A. 2C:33-7<sup>1</sup>—requires the police to try to accommodate free expression and assembly rights. Since the State of New Jersey has already struck a balance between public assembly and expression rights and the government’s need for peace and good order on the streets, Delran, as a subdivision and subordinate of the State, is not permitted to strike a different balance between these competing interests through local legislation.

Would you please ask Mr. Guest to review § 235-3 and render an opinion on its validity? And, if Mr. Guest agrees with us that § 235-3 is invalid, would you promptly pass an ordinance repealing it?

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

Sincerely,



John Paff

cc. Brian Guest, Esq., (*via email to bguest@parkermccay.com*)

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<sup>1</sup> That statute reads: “**Obstructing Highways and Other Public Passages.** a. A person, who, having no legal privilege to do so, purposely or recklessly obstructs any highway or other public passage whether alone or with others, commits a petty disorderly persons offense. "Obstructs" means renders impassable without unreasonable inconvenience or hazard. No person shall be deemed guilty of recklessly obstructing in violation of this subsection solely because of a gathering of persons to hear him speak or otherwise communicate, or solely because of being a member of such a gathering.

b. A person in a gathering commits a petty disorderly persons offense if he refuses to obey a reasonable official request or order to move:

- (1) To prevent obstruction of a highway or other public passage; or
- (2) To maintain public safety by dispersing those gathered in dangerous proximity to a fire or other hazard.

An order to move, addressed to a person whose speech or other lawful behavior attracts an obstructing audience, shall not be deemed reasonable if the obstruction can be readily remedied by police control of the size or location of the gathering.”



ATTORNEYS AT LAW

**Parker McCay P.A.**  
Three Greentree Centre  
7001 Lincoln Drive West  
P.O. Box 974  
Marlton, NJ 08053-0974

P: 856-596-8900  
F: 856-596-9631  
www.parkermccay.com

**Brian M. Guest, Esquire**  
P: 856-810-5840  
F: 856-489-6980  
bguest@parkermccay.com

May 23, 2008

File No. 08962-0001

John Paff, Chairman  
New Jersey Libertarian Party  
Post Office Box 5424  
Somerset, New Jersey 08875

**Re: Correspondence of April 5, 2008 (Two Items)**

Dear Mr. Paff:

This letter is in response to your two items of correspondence addressed to the Township of Delran dated April 5, 2008. As you may know, I serve as the Township Attorney for Delran.

With respect to your correspondence addressing Section 235-3 of the Township Code, the Council concurs that the proscribed activity is fully and adequately encompassed within the provisions of Title 2C:33-1 *et seq.* of the New Jersey Revised Statutes. I have been directed to prepare an Ordinance repealing the appropriate sections.

With respect to your letter regarding the Open Public Records Act, you essentially raise two issues. The first was the lack of an electronic form of Public Records Request on the Township's website. This has been remedied and I am informed that such a form is now available on the website.

The second issue questioned charges established by Section 150-13A of the Township Code for providing copies of certain records. Your attention is directed to Section 150-13C which provides: "Wherever the phrase 'up to' is used in Subsection A, the figure stated shall be the maximum charge. The actual charge shall be based upon the cost to the Township of providing the material." It is the Township's position that this is consistent with the Open Public Records Act and actually provides a protection to the public by establishing a maximum amount. However, this section will be amended to remove the words "based upon" and to add the sentence: "In no event shall the charge exceed that permitted by *N.J.S.A. 47:1A-5*". These changes should make Council's intent clear.

In addition, Council observed that you correctly noted some items that did not contain the phrase "up to". I have been informed that these figures were based upon quotes from outside vendors to provide copies of materials that the Township did not have the capacity to make "in

John Paff, Chairman  
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house". These items do require revision to clarify the basis for the charge and how it is to be calculated to assure that they do not exceed those charges permitted by statute. I have been directed to draft an Ordinance to make the necessary changes.

Please note that Delran Township follows a non-partisan form of government with reorganization occurring on July 1<sup>st</sup>. Unless I am able to complete the changes in time for introduction at the Council's May 27<sup>th</sup> meeting (unlikely since I leave on vacation tomorrow), these changes will not be made until after the reorganization since we cannot introduce an ordinance with one Council membership and adopt with another.

As always, thank you for bringing these issues to our attention. It is the intention of the Township to comply fully with the requirements of the law. Furthermore, I can assure you that the Delran Council is committed to principles of open government.

Should you have any questions or comments regarding the above, please do not hesitate to contact me.

Very truly yours,  
PARKER McCAY P.A.



BRIAN M. GUEST

BMG/eh

c: Jeffrey Hatcher, Township Administrator  
Jamey Eggers, RMC, Township Clerk

**AN ORDINANCE AMENDING ORDINANCE 2005-36 ESTABLISHING  
PROCEDURES FOR THE PRESERVATION OF AFFORDABLE HOUSING  
CONTROLS WITH RESPECT TO DESIGNATED UNITS IN THE TOWNSHIP  
THROUGH PURCHASE OF UNITS OR ASSIGNMENT OF MORTGAGE  
RIGHTS**

Mr. Morrow made a motion, seconded by Mr. Moran to adopt the ordinance on first reading.

There being no question, the roll was called.

Mr. Ogozalek, Sr., Mr. Morrow, Mr. Moran and Mr. Catrambone voted aye.

Ayes: 4

Nays: None

Motion Approved

**ORDINANCES ON SENCOND READING**

**TOWNSHIP OF DELRAN  
ORDINANCE 2008-7**

**AN ORDINANCE AMENDING CHAPTER 235, SECTION 3 OF THE CODE OF  
THE TOWNSHIP OF DELRAN**

**WHEREAS**, it has come to the attention of the Township Council that the provisions of §235-3 of the Code of the Township of Delran essentially duplicates the provisions of N.J.S.A. 2C:33-1 *et seq.* and, particularly N.J.S.A. 2C:33-2; and

**WHEREAS**, the Township Council is satisfied that the legislature intended to pre-empt local regulation of the offenses covered by N.J.S.A. 2C:33-2 which opinion has been confirmed by the Courts of this state; and

**WHEREAS**, the Township Council desires firm and proper enforcement with respect to disorderly persons offenses that may occur within the Township; and

**WHEREAS**, it is, therefore, desirable to amend the Township Code to avoid confusion and eliminate any potential for challenge to such provisions;

**NOW, THEREFORE, BE IT ORDAINED AND ENACTED** by the Township Council of the Township of Delran as follows:

**SECTION 1.** Section 235-3 of the Code of the Township of Delran is hereby repealed, deleted and replaced with the following:

**§235-3. Public intoxication, public offensive language; obstruction of public passage; fighting and violent behavior.**

Disorderly persons offenses such as public intoxication, public offensive language, obstruction of public passage, and fighting or other violent behavior shall be charged and prosecuted pursuant to the applicable provisions of N.J.S.A. 2C:33-1 *et seq.* It is the policy of the Township of Delran that persons comport themselves in accordance with the law and that these provisions shall be uniformly enforced within the Township.

**SECTION 2.** Should any portion of this ordinance be found void or unenforceable by a Court of competent jurisdiction, the remaining portions shall remain fully effective.

**SECTION 3.** This ordinance shall take effect twenty days after final passage and publication of notice of adoption in the manner prescribed by law.

**SECTION 4.** All Ordinances or parts of Ordinances inconsistent with the provisions of this Ordinance are repealed to the extent of their inconsistency.

The meeting was open to the public for comments.

There being no comments the meeting was closed to the public,

Mr. Moran made a motion, seconded by Mr. Morrow to adopt the ordinance on second reading.

There being no question, the roll was called.

Mr. Ogozalek, Sr., Mr. Morrow, Mr. Moran and Mr. Catrambone voted aye.

Ayes: 4

Nays: None

Motion Approved