

**ORDINANCE NO. 7-2010**

**ORDINANCE OF THE  
BOROUGH OF FRANKLIN, SUSSEX COUNTY, NEW JERSEY  
TO REPEAL CHAPTER 171 REGARDING LOITERING**

**NOW, THEREFORE, BE IT ORDAINED** by the Governing Body of the Borough of Franklin:

Section 1.

The Code of the Borough of Franklin shall be modified to repeal in its entirety Chapter 171 and reserve it for future use.

Section 2. Severability.

The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

Section 3. Repealer.

Any ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed as to their inconsistencies only.

Section 4: Effective Date.

This Ordinance shall take effect upon final passage and publication.

ATTEST:

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Patricia A. Leasure, Borough Clerk

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Paul B. Crowley, Mayor

**NOTICE**

TAKE NOTICE that the above entitled ordinance was introduced at a regular meeting of the Borough Council of the Borough of Franklin on June 22, 2010 and will be considered for final passage after public hearing at a regular meeting of the Borough Council of the Borough of Franklin to be held on July 13, 2010 at 7:00 p.m. in the Municipal Building, 46 Main Street, Franklin, New Jersey.

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Patricia A. Leasure, Borough Clerk



# New Jersey Libertarian Party

Preempted Ordinance Repeal Project

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February 23, 2010

Hon. Paul B. Crowley, Mayor, and members of the  
Franklin Borough Council

46 Main Street

Franklin, NJ 07416

(via e-mail only to [pat@frank-hardy.org](mailto:pat@frank-hardy.org) )

Dear Mayor Crowley 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 repeal of Chapter 71 (Loitering) of the Borough Code. A copy of that chapter is enclosed for your ready reference.

Loitering prohibitions are, except in a few narrow cases<sup>1</sup>, invalid in New Jersey because the Legislature, when enacting the Criminal Code in 1979, specifically declined to include a loitering prohibitions within the Code. The Legislature was concerned that "vagrancy and loitering statutes have long suffered from constitutional infirmity and have been criticized as inviting official harassment and discriminatory enforcement." See State v. Crawley, 90 N.J. 241, 247 (1982). It follows, therefore, that no municipality, such as Franklin Borough, is allowed to locally prohibit loitering or vagrancy when the Legislature has decided to decriminalize them. Id. at 251. See also, State v. Paserchia, 356 N.J. Super. 461 (App.Div.2003).

Would you, at the Council's next meeting, ask the Borough Attorney to review this Chapter and render an opinion as to its validity? You may be interested in knowing that several other municipalities have repealed their similar ordinances after receiving a request from us. (See our web page at <http://www.lpcnj.org/OGTF/Loiter.html> )

Thank you. We look forward to receiving your or your attorney's response.

Sincerely,

JOHN PAFF

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<sup>1</sup> There are two specific loitering statutes: N.J.S.A. 2C:34-1.1 (Loitering for the purpose of engaging in prostitution) and N.J.S.A. 2C:33-2.1. (Loitering for purpose of illegally using, possessing or selling controlled substance.)

**Code of the Borough of Franklin (Sussex County)**  
**Chapter 71 - Loitering**

§ 171-1 Prohibition.

It is unlawful for any person to loiter, stand idly around or lounge in front of or in any store, shop, restaurant, luncheonette, bowling alley or any place of business or in or on any public or private roads, streets, sidewalks, alleys or rights-of-way or in any public or quasi-public grounds, parks, parking lots, places or building with intent to provoke a breach of the peace or in such manner as to occasion a breach of the peace or in a manner as to impede, obstruct or delay traffic or pedestrian travel through or in such place or with a malicious and mischievous intent, provided that such person shall refuse to move on or depart when requested to do so by any police officer or by the person in charge of such place.

§ 171-2 Minors.

It is unlawful for the parent, guardian or other adult person having the care or custody of any minor under the age of 18 to knowingly permit such minor to remain idle or loiter in violation of § 171-1. If it is established that any such minor remained idle or loitered, it shall be presumed, in the absence of proof to the contrary, that the parent, guardian or other adult having the care or custody of such minor knowingly permitted such minor to do so; but if it is established that such minor remained idle or loitered in violation of § 171-1 at any time between the hours of 9:00 p.m. and 6:00 a.m. of the following day, or if it is established that such minor who remained idle or loitered was previously found guilty of the same offense, then it shall be presumed, in the absence of clear and convincing proof to the contrary, that the parent, guardian or other adult having the care or custody of such minor knowingly permitted such minor to do so. No legal action in respect to such minor other than a previous acquittal of such minor shall bar the conviction of the parent, guardian or other adult having the care or custody of such minor.

§ 171-3 Notification of parent or guardian.

Whenever any such minor is arrested for violating this chapter, the Chief of Police shall notify the parent, guardian or other person having custody of such minor of such arrest.