

**TOWN OF GUTTENBERG**  
**ADOPTION OF ORDINANCE**  
**Public Notice Published 02/12/10**

The foregoing ordinance/ordinances was/were introduced at a Regular Meeting of the Governing Body of the Town of Guttenberg held on January 4, 2010 and was/were read for the first time. This ordinance was / were read for a second time and was voted upon and adopted on a Regular meeting held on January 25, 2010. A copy of this ordinance is posted on the bulletin board in the Municipal Building.

ORDINANCE #001-10 RESCINDING CHAPTER 3 SECTION 2 LOITERING OF THE GENERAL ORDINANCES OF THE TOWN OF GUTTENBERG, COUNTY OF HUDSON, STATE OF NEW JERSEY

ORDINANCE #002-10 RESCINDING CHAPTER 3 SECTION 16 DISORDERLY PERSONS OFFENSE OF THE GENERAL ORDINANCES OF THE TOWN OF GUTTENBERG, COUNTY OF HUDSON, STATE OF NEW JERSEY

This Ordinance shall take effect immediately upon final adoption and publication according to law.

ALBERTO CABRERA  
ACTING TOWN CLERK

**TOWN OF GUTTENBERG  
ORDINANCE HEARING NOTICE  
Public Notice Published 01/13/10**

The foregoing ordinance/ordinances were introduced at a Regular Meeting of the Governing Body of the Town of Guttenberg held on January 4, 2010 and were read for the first time. This ordinance will be further considered for final passage by the said Mayor and Council of the Town of Guttenberg at the Guttenberg Town Hall, 6808 Park Avenue, Guttenberg, NJ at a meeting beginning at 8:00 pm, on January 25, 2010 or at any time and place to which such meeting may be adjourned. All persons interested will be given the opportunity to be heard concerning such ordinance. A copy of this Ordinance is posted on the bulletin board in the Municipal Building and a copy is available up to and including the time of said meeting to the members of the general public.

ORDINANCE#001-10  
INTRODUCTION

RESCINDING CHAPTER 3 SECTION 2 LOITERING OF THE REVISED GENERAL ORDINANCES OF THE TOWN OF GUTTENBERG, COUNTY OF HUDSON, STATE OF NEW JERSEY

ORDINANCE#002-10  
INTRODUCTION

RESCINDING CHAPTER 3 SECTION 16 DISORDERLY PERSONS OFFENSE OF THE REVISED GENERAL ORDINANCES OF THE TOWN OF GUTTENBERG, COUNTY OF HUDSON, STATE OF NEW JERSEY

ALBERTO CABRERA  
ACTING TOWN CLERK

## POLICE REGULATIONS

3-2

**3-1.3 Penalty.** Any person who shall violate any of the provisions of this section shall, upon conviction, be liable to the penalty stated in Chapter I, Section 1-5, and each violation of this section, and each day the same is violated shall be deemed and taken to be a separate and distinct offense. (Ord. 12/4/50 §6)

**3-2 LOITERING.**

**3-2.1 Loitering Prohibited.** 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 likely to cause any of the conditions enumerated in this subsection, he shall, if he deems it necessary for the 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 this subsection.

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

- a. Clearly cause an immediate, actual, physical violent reaction from a reasonable person, which violent reaction will cause a threat to the peace and order of the public.
- b. Obstruct the free passage of pedestrians or vehicles.
- c. Obstruct, molest, or interfere with any person lawfully in any public place as defined in subsection 3-2.1.
- d. Cause excessive noise or disorder so as to interfere with the sleep or peace and quiet of any person or neighborhood.

(Ord. 3/19/73 §2)

**3-2.2 Unsolicited Remarks.** No person shall make unsolicited remarks of an offensive, disgusting or insulting nature which will so disturb another reasonable person as to

**3-2 TOWN OF GUTTENBERG CODE**

cause such person to react immediately in such a way as to threaten by physical violence the peace and order of the public. (Ord. 3/19/73 §3)

**3-2.3 Minors.** Whenever any minor under the age of eighteen (18) is charged with a violation of this section, the Chief of Police shall notify the parent, guardian or other person having custody of such minor of such charge. (Ord. 3/19/73 §4)

**3-2.4 Penalty.** Any person or persons violating any of the provisions of this section, shall upon conviction, be liable to the penalty stated in Chapter I, Section 1-5. (Ord. 3/19/75 §5)

**3-3 CONSUMPTION AND POSSESSION OF ALCOHOLIC BEVERAGES ON PUBLIC PROPERTY OR IN PUBLIC PLACES.**

**3-3.1 Consumption of Alcoholic Beverages.** No person shall serve, sell, dispense, drink or consume any alcoholic beverage on a public street of this Town or upon any public grounds, parks, sidewalks or in any automobile or other vehicle or any other means of transportation while on the public streets, public grounds, parks or sidewalks. (New)

**3-3.2 Possession of Open Containers.** No person shall possess any open bottle, can or container which contains alcoholic beverages on any public street of this Town or upon any public grounds, parks, sideways or in any automobile or other vehicle or any other means of transportation while on the public streets, public grounds, parks or sidewalks. (New)

**3-3.3 Penalty.** Any person violating this section shall, upon conviction, be liable to the penalty stated in Chapter I, Section 1-5. (Ord. 11/17/86 §1)

**POLICE REGULATIONS**

3-16

than five hundred (\$500.00) dollars and a minimum mandatory period of imprisonment of not less than ten (10) days, and shall be of such form and substance as the Court shall deem appropriate under the circumstances.

- d. In addition to any other penalty imposed by the Court, any person convicted for a violation of this section may, at the discretion of the Judge of the Municipal Court, be required to pay to the owner of the damaged property monetary restitution in the amount of the pecuniary damage caused by the act of graffiti.  
(Ord. #1995-06 §2)

**3-16 DISORDERLY PERSONS OFFENSE.**

**3-16.1 Offenses.** Any person who commits any of the following acts shall be deemed to have committed the offense of disorderly conduct:

- a. With purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof:
1. Engages in fighting or threatening, or violent or tumultuous behavior; or
  2. Creates a hazardous or physically dangerous condition by any act which serves no legitimate purpose.
- b. Uses offensive language which is spoken loudly, in a public place, and is likely to incite the hearer to an immediate breach of the peace.
- c. With purpose to harass another:
1. Makes, or causes to be made, a communication(s) anonymously or at extremely inconvenient hours or in an offensively coarse language, or any other manner likely to cause annoyance or alarm;

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TOWN OF GUTTENBERG CODE

2. Subjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so; or

320.8

Rev. Ord. Supp. 7/04

## POLICE REGULATIONS

3-17

3. Engages in any other course of alarming conduct or of repeatedly committed acts with the purpose to alarm or seriously annoy such other person.
- d. Having no legal privilege to do so, purposely or recklessly obstructs any highway or other public passage whether alone or with others.
- e. Obstructs, molests or interferes with any person in a public place or private place, by obstructing or interfering with the movement of any person lawfully on the street, or by unwarranted, intervening or intermeddling in the activities of others.
- f. With purpose to prevent or disrupt a lawful meeting, procession or gathering, does an act tending to obstruct or interfere with it physically.
- g. Purposely defaces, damages or pollutes any public monument, insignia, symbol, or structure, or place of worship or burial.  
(Ord. #007/96)

**3-16.2 Penalty.** Any person or persons violating any of the provisions of this section, shall upon conviction, be liable to the penalty stated in Chapter I, Section 1-5. (Ord. #1994-13; Ord. #007/96)

### **3-17 REGULATIONS FOR DYNAMIC COMPACTION OF SOIL.**

**3-17.1 Hours Prohibited.** No person shall and no owner shall permit the compacting of soil or surcharging land by means of the process commonly known as dynamic compaction, before 8:00 a.m. and after 6:00 p.m., Monday through Friday, Saturday, 9:00 a.m. to 2:00 p.m. and prohibited on Sunday. (Ord. #027/97 §I)



# 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)*

May 5, 2008

Hon. David Delle Donna, Mayor and Members of Council

Town of Guttenberg

6808 Park Ave

Guttenberg, NJ 07093

*(via email to [Townclerk@myguttenberg.com](mailto:Townclerk@myguttenberg.com))*

Dear Mayor Delle Donna 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 § 3-2 (Loitering) and § 3-16 (Disorderly Conduct) of the Town Code.

Attached is a) an undated email from the Borough Attorney from the Borough of Butler in Morris County, b) a draft ordinance that will repeal Butler's loitering ordinance, c) Butler's loitering ordinance, and d) Guttenberg's loitering ordinance.

If you compare Guttenberg's and Butler's ordinances, you will find that even though they are not identical, they are substantially similar. Given that Butler has opted to repeal its loitering ordinance, it would seem to be prudent for the Guttenberg Mayor and Council to ask its attorney to review § 3-2 and report on its validity.

§ 3-16 is clearly preempted because it attempts to regulate street behavior when such has already been comprehensively addressed by the Criminal Code. If you read State v. Paserchia, 356 N.J. Super. 461, (App.Div.2003), page 466, you will see that the Appellate Division found that part of the New Jersey Criminal Code, 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 safeguarding 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.

Would you please ask your attorney to review these ordinances and render an opinion on their validity?

Sincerely

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](#)

No virus found in this incoming message.

Checked by AVG.

Version: 7.5.519 / Virus Database: 269.22.2/1353 - Release Date: 3/31/2008 6:21 PM

**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."

15501

§ 155-1

## BUTLER CODE

§ 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

## § 155-3

## LOITERING

## § 155-7

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.<sup>1</sup>

- 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-

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

§ 155-7

## BUTLER CODE

§ 155-7

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.

## POLICE REGULATIONS

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**3-1.3 Penalty.** Any person who shall violate any of the provisions of this section shall, upon conviction, be liable to the penalty stated in Chapter I, Section 1-5, and each violation of this section, and each day the same is violated shall be deemed and taken to be a separate and distinct offense. (Ord. 12/4/50 §6)

**3-2 LOITERING.**

**3-2.1 Loitering Prohibited.** 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 likely to cause any of the conditions enumerated in this subsection, he shall, if he deems it necessary for the 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 this subsection.

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

- a. Clearly cause an immediate, actual, physical violent reaction from a reasonable person, which violent reaction will cause a threat to the peace and order of the public.
- b. Obstruct the free passage of pedestrians or vehicles.
- c. Obstruct, molest, or interfere with any person lawfully in any public place as defined in subsection 3-2.1.
- d. Cause excessive noise or disorder so as to interfere with the sleep or peace and quiet of any person or neighborhood.

(Ord. 3/19/73 §2)

**3-2.2 Unsolicited Remarks.** No person shall make unsolicited remarks of an offensive, disgusting or insulting nature which will so disturb another reasonable person as to

**3-2 TOWN OF GUTTENBERG CODE**

cause such person to react immediately in such a way as to threaten by physical violence the peace and order of the public. (Ord. 3/19/73 §3)

**3-2.3 Minors.** Whenever any minor under the age of eighteen (18) is charged with a violation of this section, the Chief of Police shall notify the parent, guardian or other person having custody of such minor of such charge. (Ord. 3/19/73 §4)

**3-2.4 Penalty.** Any person or persons violating any of the provisions of this section, shall upon conviction, be liable to the penalty stated in Chapter I, Section 1-5. (Ord. 3/19/75 §5)

**3-3 CONSUMPTION AND POSSESSION OF ALCOHOLIC BEVERAGES ON PUBLIC PROPERTY OR IN PUBLIC PLACES.**

**3-3.1 Consumption of Alcoholic Beverages.** No person shall serve, sell, dispense, drink or consume any alcoholic beverage on a public street of this Town or upon any public grounds, parks, sidewalks or in any automobile or other vehicle or any other means of transportation while on the public streets, public grounds, parks or sidewalks. (New)

**3-3.2 Possession of Open Containers.** No person shall possess any open bottle, can or container which contains alcoholic beverages on any public street of this Town or upon any public grounds, parks, sideways or in any automobile or other vehicle or any other means of transportation while on the public streets, public grounds, parks or sidewalks. (New)

**3-3.3 Penalty.** Any person violating this section shall, upon conviction, be liable to the penalty stated in Chapter I, Section 1-5. (Ord. 11/17/86 §1)

To: Townclerk@myguttenberg.com  
From: John Paff <paff@pobox.com>  
Subject: Loitering  
Cc:  
Bcc:  
Attached: c:\documents and settings\daddy\application  
data\qualcomm\eudora\attach\a80505Mayor and Council with repeal  
request.pdf;

Mr. Cabrera:

Attached is another copy of my 05/05/08 letter to the Mayor and Council regarding the Town's loitering ordinance. Has this been discussed? If not, can it be put on the agenda for the 07/14/08 meeting?

Please let me know.

Thanks,

John Paff

# OPRA Request

## Town of Guttenberg

*Submitted on 11/28/09 via E-Mail to Townclerk@myguttenberg.com*

**To the Custodian of Records:** Please accept this as my request for government records. Please note that the Open Public Records Act (OPRA) is not the only basis for my request. I claim entitlement to the records sought under both OPRA and the Common Law right of access.

**Requestor's Name:** John Paff  
**Address:** DO NOT use regular mail either for replying to this request or for sending me the responsive records.  
**Please use e-mail or fax instead.**  
**Phone:** 732-873-1251  
**FAX:** 908-325-0129  
**E-Mail:** paff@pobox.com

### Background:

On May 5, 2008, I, on behalf of the New Jersey Libertarian Party, wrote to Mayor Delle Donna and the Town Council asking for repeal of Town Code Sections 3-2 and 3-16 regarding Loitering and Disorderly Conduct. I have no record of having received a response to this letter.

### Records Request:

1. The first page of the Libertarian Party's May 5, 2008 letter, just to confirm that the Town received it.
2. The Town's response, if any, to the May 5, 2008 letter.
3. Any ordinances that repealed or amended the code provisions set forth within the May 5, 2008 letter.
4. Any writings by or on behalf of the Town Council to an attorney seeking advice on the matters raised in the May 5, 2008 letter.
5. Any responses received to any writings within the scope of ¶ 4 above.

### Note to Custodian

As to ¶¶ 4 and 5 of this request, be advised that the party asserting the attorney-client privilege has the burden of proving that each requirement for the existence of the privilege has been satisfied. Matter of Grand Jury Subpoenas Duces Tecum Served by Sussex Grand Jury on Farber, 241 N.J. 18, 34 (App. Div. 1989). Be further advised that N.J.S.A. 47:1A-6 places the same burden of proof on records custodians who seek to deny access to records.

The attorney-client privilege protects only the substance of the communication, not the fact of the representation or the surrounding circumstances. State v. Toscano, 13 N.J. 418, 424-25 (1953) The privilege does not protect "the identity of the client; the fact that the client consulted with the lawyer and the general subject matter of the consultation." Restatement (Third) of Law Governing Lawyers, § 69 comment g (2000). Further, the date of the communication and the name of the attorney are not protected by the privilege. Ramseur v. Chase Manhattan Bank, 865 F.2d 460, 467 (2nd Cir. 1989) and Howell v. Jones, 516 F.2d 53, 58 (5th Cir. 1975).

In sum, the attorney-client privilege is limited. Accordingly, you are cautioned against regarding the privilege "as some talisman, the mere utterance of which magically casts of spell of secrecy over the documents at issue." Illinois Education Association v. Illinois State Board of Education, 791 N.E.2d 522, Ill. 2003). Rather, if any records are responsive to ¶¶ 4 and 5 of this request, you must disclose them after redacting any exempt material. N.J.S.A. 47:1A-5(g). "The custodian shall delete or excise from a copy of the record that portion which the custodian asserts is exempt from access and shall promptly permit access to the remainder of the record."

# TOWN OF GUTTENBERG

MUNICIPAL BUILDING  
6808 Park Avenue  
Guttenberg, N.J. 07093

Tel: (201) 868-2315  
Fax: (201) 868-9332



RESPOND TO:

December 2, 2009

Mr. John Paff  
New Jersey Libertarian Party

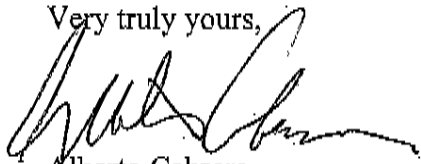
Response to Mr. John Paff via fax only:

We have completed your request:

1. The Town acknowledges that we did receive the letter dated May 5, 2008, see attachedment.
2. The Town has no document on file of a response relating to the letter from May 5, 2008.
3. The Town has no document on file of any ordinances to repeal the code provisions set forth within the May 5, 2008 letter.
4. The Town has no document on file on behalf of the Town Council to an attorney seeking advice on the matter raised in the May 5, 2008 letter.
5. The Town has no document of any writings within the scope of #4 above.

No fee charged.

Very truly yours,



Alberto Cabrera  
Acting Town Clerk

# TOWN OF GUTTENBERG

MUNICIPAL BUILDING  
6808 Park Avenue  
Guttenberg, N.J. 07083



Tel: 868-2315  
Fax: 868-2332

RESPOND TO:

VIA – FAX AND REGULAR MAIL:

July 3, 2008

Mr. John Paff  
PO Box 5424  
Somerset, N.J. 08875

Re: Response to your Public Record Request:

Dear Mr. Paff:

1. Thank you for withdrawing your request dated June 20, 2008.
2. I'm providing you with a reply to your May 5, 2008, Opra Request.
  - a) There was a meeting on August 21, 2006, at that meeting the minutes were taken by the former board secretary who retired due to disability illness. At the present time the current board secretary cannot find any minutes.  
We will continue to search for any minutes, and if found we will supply you with them.

# TOWN OF GUTTENBERG

MUNICIPAL BUILDING  
6808 Park Avenue  
Guttenberg, N.J. 07093

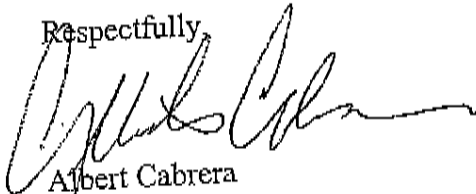


Tel. 868-2315  
Fax: 868-9332

RESPOND TO:

- b) I'm providing you with copies of the first two closed session meetings held in 2008. Some parts of the closed session minutes are being redacted because of litigation.
- c) No. The Town Council passes a motion to go into closed session, the
- d) Minutes are not recorded, and clerk takes minutes by hand.

Respectfully,



Albert Cabrera  
Acting Town Clerk



# New Jersey Libertarian Party

Open Government Advocacy Project

*John Paff, Chairman*

*P.O. Box 5424*

*Somerset, NJ 08875*

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

*Email: lpsmc@pobox.com*

July 7, 2008

Alberto Cabrera, Clerk  
Town of Guttenberg  
6808 Park Ave  
Guttenberg, NJ 07093

*(via email to [Townclerk@myguttenberg.com](mailto:Townclerk@myguttenberg.com))*

Dear Mr. Cabrera:

I write, both individually and in my capacity as Chairman of the New Jersey Libertarian Party's Open Government Advocacy Project to confirm our telephone conversation of this morning. We discussed:

1. That the part of my May 5, 2008 records request that asked for the minutes of the August 21, 2006 Planning/Zoning Board meeting remains unfulfilled because the Town cannot find the minutes and needs more time to locate them. Accordingly, I agreed to extend my request until September 7, 2008 by which time the Town will either a) produce the minutes or b) declare that they do not exist. The May 5, 2008 request is resolved in all other respects.
2. The Town Council, at its July 14, 2008 meeting, will discuss whether to use Delanco Township's form of closed session resolution and that you will inform me after that meeting as to what the Council decided.
3. I'll submit another OPRA request for closed session resolutions and minutes sometime in the Autumn or Winter.

Thank you for your attention to this matter.

Sincerely,

John Paff



# New Jersey Libertarian Party

Open Government Advocacy Project

John Paff, Chairman

P.O. Box 5424

Somerset, NJ 08875

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

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

July 7, 2008

Alberto Cabrera, Clerk  
Town of Guttenberg  
6808 Park Ave  
Guttenberg, NJ 07093

(via U.S. Mail & email to [Townclerk@myguttenberg.com](mailto:Townclerk@myguttenberg.com))

RECEIVED

JUL 08 2008

TOWN CLERK  
GUTTENBERG, NJ

Dear Mr. Cabrera:

I received your July 3, 2008 email advising:

*Your opra request is ready. I'm sending you a reply via Email, also via fax, and via regular mail. The total amount of your request is: \$3.00.*

I also received a second email advising me

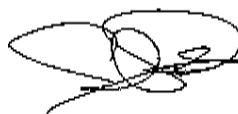
1. *Thank you for withdrawing your request dated June 20, 2008.*
2. *I'm providing you with a reply to your May 5, 2008, Opra Request.*
  - a) *There was a meeting on August 21, 2006, at that meeting the minutes were taken by the former board secretary who retired due to disability illness. At the present time the current board secretary cannot find any minutes. We will continue to search for any minutes, and if found we will supply you with them.*
  - b) *I'm providing you with copies of the first two closed session meetings held in 2008. Some parts of the closed session minutes are being redacted because of litigation.*
  - c) *No. The Town Council passes a motion to go into closed session, the*
  - d) *Minutes are not recorded, and clerk takes minutes by hand.*

However, the closed session minutes were not included with the second email.

Enclosed is my \$3.00 check. Please provide me with the responsive documents as soon as possible.

I appreciate your time and look forward to receiving your response.

Sincerely,

A handwritten signature in black ink, appearing to read "John Paff". The signature is stylized with several loops and a long horizontal stroke at the bottom.

John Paff



# 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)*

December 7, 2009

Alberto Cabrera, Acting Clerk  
Town of Guttenberg  
6808 Park Ave  
Guttenberg, NJ 07093

*(via Fax only to 201-868-9332)*

Dear Mr. Cabrera:

I write, both individually and in my capacity as Chairman of the New Jersey Libertarian Party's Preempted Ordinance Repeal Project to question your December 2, 2009<sup>1</sup> response to my Open Public Records Act request.

¶ 1 of my request asked for a copy of the first page of a May 5, 2008 letter that asked the Mayor and Council to repeal Town Code §§ 3-2 and 3-16 regarding Loitering and Disorderly Conduct. In your December 2, 2009 response you acknowledge that you "did receive the letter dated May 5, 2008" and direct me to the attached copy.

But, the letter attached to your response is dated July 7, 2008, **not** May 5, 2008, and concerns matters other than §§ 3-2 and 3-16 of the Town Code. Does the Town have a copy of my May 5, 2008 letter on file? Please advise.

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

Sincerely

John Paff

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<sup>1</sup> Even though your response was dated December 2, 2009, it was not faxed to me until December 4, 2009.

# TOWN OF GUTTENBERG

MUNICIPAL BUILDING  
6808 Park Avenue  
Guttenberg, N.J. 07093

Tel. (201) 868-2315  
Fax: (201) 868-9332



RESPOND TO:

December 11, 2009

Mr. John Paff, Chairman  
New Jersey Libertarian Party

Response to Mr. John Paff, December 7, 2009 letter.  
VIA FAX ONLY

Dear Mr. Paff:

In search of the documents requested this office does not have any record of such letter dated May 5, 2008, requesting Mayor and Board of Council to repeal Town Code 3-2 and 3-16 regarding Loitering and Disorderly Conduct. In addition we further investigated and no such document was found by this office.

Very truly yours,

A handwritten signature in black ink, appearing to read "Alberto Cabrera".

Alberto Cabrera  
Acting Town Clerk



# 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)*

December 12, 2009

Alberto Cabrera, Acting Clerk  
Town of Guttenberg  
6808 Park Ave  
Guttenberg, NJ 07093

Dear Mr. Cabrera:

I write, both individually and in my capacity as Chairman of the New Jersey Libertarian Party's Preempted Ordinance Repeal Project.

I am in receipt of your December 11, 2009 letter indicating that have no record of ever having received my May 5, 2009 letter seeking repeal of Town Code §§ 3-2 and 3-16 regarding Loitering and Disorderly Conduct.

Enclosed is another copy of that letter. Would you please distribute copies to the Mayor and Council and ask them to direct the Town Attorney to review the ordinances and render an opinion on their validity?

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

Sincerely

John Paff



# 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)*

May 5, 2008

Hon. David Delle Donna, Mayor and Members of Council

Town of Guttenberg

6808 Park Ave

Guttenberg, NJ 07093

*(via email to [Townclerk@myguttenberg.com](mailto:Townclerk@myguttenberg.com))*

Dear Mayor Delle Donna 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 § 3-2 (Loitering) and § 3-16 (Disorderly Conduct) of the Town Code.

Attached is a) an undated email from the Borough Attorney from the Borough of Butler in Morris County, b) a draft ordinance that will repeal Butler's loitering ordinance, c) Butler's loitering ordinance, and d) Guttenberg's loitering ordinance.

If you compare Guttenberg's and Butler's ordinances, you will find that even though they are not identical, they are substantially similar. Given that Butler has opted to repeal its loitering ordinance, it would seem to be prudent for the Guttenberg Mayor and Council to ask its attorney to review § 3-2 and report on its validity.

§ 3-16 is clearly preempted because it attempts to regulate street behavior when such has already been comprehensively addressed by the Criminal Code. If you read State v. Paserchia, 356 N.J. Super. 461, (App.Div.2003), page 466, you will see that the Appellate Division found that part of the New Jersey Criminal Code, 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 safeguarding 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.

Would you please ask your attorney to review these ordinances and render an opinion on their validity?

Sincerely

Subject: Borough of Butler - Loitering ordinance Repeal  
From: "Robert H. Oostdyk" <roberto@johnsonmurphy.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](#)

No virus found in this incoming message.

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Version: 7.5.519 / Virus Database: 269.22.2/1353 - Release Date: 3/31/2008 6:21 PM

**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."

15501

§ 155-1

## BUTLER CODE

§ 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

## § 155-3

## LOITERING

## § 155-7

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.<sup>1</sup>

- 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-

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

§ 155-7

## BUTLER CODE

§ 155-7

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.

## POLICE REGULATIONS

3-2

**3-1.3 Penalty.** Any person who shall violate any of the provisions of this section shall, upon conviction, be liable to the penalty stated in Chapter I, Section 1-5, and each violation of this section, and each day the same is violated shall be deemed and taken to be a separate and distinct offense. (Ord. 12/4/50 §6)

**3-2 LOITERING.**

**3-2.1 Loitering Prohibited.** 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 likely to cause any of the conditions enumerated in this subsection, he shall, if he deems it necessary for the 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 this subsection.

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

- a. Clearly cause an immediate, actual, physical violent reaction from a reasonable person, which violent reaction will cause a threat to the peace and order of the public.
- b. Obstruct the free passage of pedestrians or vehicles.
- c. Obstruct, molest, or interfere with any person lawfully in any public place as defined in subsection 3-2.1.
- d. Cause excessive noise or disorder so as to interfere with the sleep or peace and quiet of any person or neighborhood.

(Ord. 3/19/73 §2)

**3-2.2 Unsolicited Remarks.** No person shall make unsolicited remarks of an offensive, disgusting or insulting nature which will so disturb another reasonable person as to

**3-2 TOWN OF GUTTENBERG CODE**

cause such person to react immediately in such a way as to threaten by physical violence the peace and order of the public. (Ord. 3/19/73 §3)

**3-2.3 Minors.** Whenever any minor under the age of eighteen (18) is charged with a violation of this section, the Chief of Police shall notify the parent, guardian or other person having custody of such minor of such charge. (Ord. 3/19/73 §4)

**3-2.4 Penalty.** Any person or persons violating any of the provisions of this section, shall upon conviction, be liable to the penalty stated in Chapter I, Section 1-5. (Ord. 3/19/75 §5)

**3-3 CONSUMPTION AND POSSESSION OF ALCOHOLIC BEVERAGES ON PUBLIC PROPERTY OR IN PUBLIC PLACES.**

**3-3.1 Consumption of Alcoholic Beverages.** No person shall serve, sell, dispense, drink or consume any alcoholic beverage on a public street of this Town or upon any public grounds, parks, sidewalks or in any automobile or other vehicle or any other means of transportation while on the public streets, public grounds, parks or sidewalks. (New)

**3-3.2 Possession of Open Containers.** No person shall possess any open bottle, can or container which contains alcoholic beverages on any public street of this Town or upon any public grounds, parks, sideways or in any automobile or other vehicle or any other means of transportation while on the public streets, public grounds, parks or sidewalks. (New)

**3-3.3 Penalty.** Any person violating this section shall, upon conviction, be liable to the penalty stated in Chapter I, Section 1-5. (Ord. 11/17/86 §1)