

**ORDINANCE 8-2010**

**ORDINANCE OF THE BOROUGH OF MADISON REPEALING  
ORDINANCE 4-73 SET FORTH IN CHAPTER 122 OF THE BOROUGH  
CODE ENTITLED "LOITERING"**

WHEREAS, the Borough Attorney has recommended that Ordinance 4-73 set forth in Chapter 122 of the Borough Code, entitled "Loitering", be repealed; and

WHEREAS, the Borough Council has determined that there is a need to repeal Ordinance 4-73 set forth in Chapter 122 of the Borough Code.

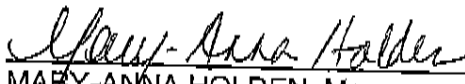
NOW, THEREFORE, BE IT ORDAINED by the Council of the Borough of Madison, in the County of Morris and State of New Jersey, as follows:

SECTION 1: All provisions of Chapter 122 of the Borough Code are hereby deleted. Ordinance 4-73 is hereby repealed.

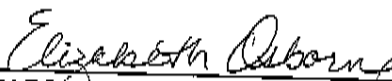
SECTION 2: Chapter 122 of the Borough Code shall state that it is "reserved".

SECTION 3: This Ordinance shall take effect as provided by law.

ADOPTED AND APPROVED  
February 22, 2010

  
\_\_\_\_\_  
MARY-ANNA HOLDEN, Mayor

Attest:

  
\_\_\_\_\_  
ELIZABETH OSBORNE, Borough Clerk

Introduced and passed: February 8, 2010  
Published, Madison Eagle: February 11, 2010  
Hearing and consideration for final adoption: February 22, 2010  
Published upon final adoption, Madison Eagle: February 25, 2010



# New Jersey Libertarian Party

Preempted Ordinance Repeal Project

*John Paff, Chairman*

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January 19, 2009

Hon. Mary-Anna Holden, Mayor, Members of the Borough Council  
Borough of Madison  
205 Madison Ave  
Madison, NJ 07940  
*(via Fax only to 973-593-3071)*

Dear Mayor Holden 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 Chapter 122 of the Borough Code dealing with loitering.

Attached is a January 15, 2010 letter from the Morris County Prosecutor's Office that responded to my December 7, 2009 complaint<sup>1</sup> that Madison Borough Prosecutor James DeMarzo violated a 1998 Attorney General Directive by allowing municipal court defendants to downgrade statutory disorderly persons and petty disorderly persons offenses to Chapter 122 violations. As you can see, the Prosecutor's Office found that the law is "settled" that "municipal ordinances prohibiting loitering type activities" are invalid and unenforceable.

Given that Chapter 122 is invalid, I ask that you please direct your Borough Attorney to draft an ordinance repealing it in its entirety. Will you do this?

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

Sincerely,

John Paff

cc. Hon. Gary F. Troxell, J.M.C., *(via Fax only to 973-593-3029)*  
Joseph Mezzacca, Jr., Esq., Attorney, *(via e-mail to [lawfirm@mezzacca.com](mailto:lawfirm@mezzacca.com) )*  
James DeMarzo, Esq., Prosecutor *(via e-mail to [jdemarzo@omdlaw.net](mailto:jdemarzo@omdlaw.net))*

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<sup>1</sup> My December 7, 2009 complaint is available for download at <http://ogtf.lpcnj.org/LoiterMadison.pdf>



## MORRIS COUNTY PROSECUTOR'S OFFICE

Administration & Records Bldg.

P.O. Box 900

Morristown, New Jersey 07963-0900

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PROSECUTOR

CERTIFIED BY THE SUPREME COURT OF  
THE STATE OF NEW JERSEY AS A  
CERTIFIED CRIMINAL TRIAL ATTORNEY

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January 15, 2010

Chairman John Paff  
Preempted Ordinance Repeal Project  
New Jersey Libertarian Party  
P.O. Box 5424  
Somerset, New Jersey 08875-5424


Re: Mr. James DeMarzo  
MCPO File No.: 2009X-005966 (C-09-264)

Dear Mr. Paff:

Thank you for your recent correspondence regarding the plea bargaining practices of James DeMarzo, Municipal Prosecutor for the Borough of Madison.

As you correctly pointed out in your letter, it is improper for a Municipal Prosecutor to downgrade Title 2C charges to municipal ordinance violations where a State statute has preempted the field. See New Jersey Attorney General's Directive, "Plea Agreements in Municipal Court," dated November 18, 1998. Although the question of whether the legislature intended to preempt a particular field may not always be clear, it has at least been settled with respect to the enforcement of municipal ordinances prohibiting loitering type activities. See State vs. Crawley, 90 N.J. 241 (1982); c.f. State vs. Paserchia, 356 N.J. Super. 461 (App. Div. 2003).

Please be advised that as a result of your letter, we decided to remind all of our Municipal Prosecutors of the Directive's existence and the prohibition contained therein. Once again, we thank you for bringing this issue to our attention.

Very truly yours,  
  
Robert A. Weber, Esq.  
Supervising Assistant Prosecutor

RAW:eb

c: Detective Daniel Henderson

## **Madison Borough Code**

### **§ 122-1 Definitions.**

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

#### **LOITERING**

Remaining idle in essentially one location, and shall include the concept of spending time idly, to be dilatory, to linger, to stay, to saunter, to delay or to stand around, and shall also include the colloquial expression "hanging around."

#### **PUBLIC PLACE**

Any place to which the general public has access and a right to resort for business, entertainment, worship, education or other lawful purpose, but does not necessarily mean a place devoted exclusively to the uses of the general public. It shall include the front or immediate area of any store, shop, restaurant, tavern, school building, place of worship and also public grounds, public buildings, areas or parks.

### **§ 122-2 Obstruction of public ways and places.**

A. It shall be unlawful for any person to loiter, loaf, wander, stand or remain idle either alone and/or in concert with others in a public place with the intent of causing in convenience or annoyance to the public in such manner so as to:

- (1) Obstruct any public street, public highway, public sidewalk or any other public place or building by hindering, molesting or impeding the free and uninterrupted passage of vehicles, traffic or pedestrians.
- (2) Commit, in or upon any public street, public highway, public sidewalk or any other public place or building, any act or thing which is an obstruction, molestation or interference with the free and uninterrupted use of property; or with any place of worship, school or university; or with any business lawfully conducted by anyone in or upon or facing or fronting upon any such public street, public highway, public sidewalk or any other public place or building, all of which prevent the free and uninterrupted ingress, egress and regress therein, thereon and thereto.
- (3) Commit, in or upon any public street, public highway, public sidewalk or any other public place or building, any act or thing which will clearly cause an immediate, actual, physical, violent reaction from any person lawfully occupying any such public street, public highway, public sidewalk, public place or building, which violent reaction will cause a threat to the peace and order of the public.

B. When any person causes or commits any of the conditions enumerated in Subsection A herein, a police officer or any law enforcement officer shall order that person or persons to stop causing or committing such condition and to move on or disperse. Any person who fails or refuses to obey such orders shall be guilty of a violation of this chapter.

### **§ 122-3 Violations and penalties.**

Any person who shall violate any of the provisions of this chapter shall be subject to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 90 days, or both.