

Millstone Township (Monmouth County) passed an ordinance on March 18, 2009 that completely revised the Township's Peace and Good Order Code. Several provisions, including the loitering prohibitions, did not survive the March 18, 2009 amendment.

Following are the Libertarian Party's November 14, 2008 letter to the Mayor and Committee and the Peace and Good Order code provision as it exists now and as it existed before the March 18, 2009 ordinance was enacted.



New Jersey Libertarian Party

Preempted Ordinance Repeal Project

John Paff, Chairman

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November 14, 2008

Hon. Nancy Grbelja, Mayor, and
Members of the Millstone Township Committee
470 Stage Coach Road
Millstone Twp., NJ 08510 (Via email to m-dellasala@millstone.nj.us)

Dear Mayor Grbelja and Members of the Township Committee:

I write, both individually and in my capacity as Chairman of the New Jersey Libertarian Party's Preempted Ordinance Repeal Project. Attached is a copy of Millstone's Code regarding Peace and Good Order as modified by Ord. No. 08-31 which was proposed on November 5, 2008. I ask that you please forward this correspondence to Township Attorney Duane O. Davison, Esq. and ask him to provide the Committee with his response to it prior to Ordinance 08-31's second reading on December 3, 2008.

The loitering provisions in § 3-9.2(a) and (b) are invalid because the New Jersey Legislature, when enacting the Criminal Code in the late 1970s, specifically decided to **not** include loitering among the 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." State v. Crawley, 90 N.J. 241, 247 (1982)) It follows that no municipality, such as Millstone Township, is allowed to locally prohibit loitering after the Legislature has decided to decriminalize it. Id. at 251.

Thus, § 3-9.2(a) and (b) are invalid in their present form and will still be invalid even if the proposed amendments are enacted. Accordingly, both subsections should be repealed in their entirety. For the same reasons, I believe that § 3-9.2(c) and (p), that deal with "Paupers, Beggars and Idlers" and "Tramps" should also be repealed or at least be comprehensibly rewritten.

Many of the other sections of the Peace and Good Code, such as § 3-9.2(1) (False Alarms), are invalid because the Legislature has passed comprehensive legislation (N.J.S.A. 2C:33-3 prohibiting "False Public Alarms") that intends to regulate this conduct statewide and leaves no room for local legislation on the same topic. See N.J.S.A. 2C:1-5d and State v. Felder, 329 N.J. Super. 471 (App. Div. 2000). Similarly, the type of conduct sought to be proscribed by § 3-9.2(e) (Soliciting) has been comprehensively dealt with in N.J.S.A. 2C:14-4 (Lewdness) and N.J.S.A. 2C:34-1, et. Seq. (Prostitution).

In sum, I ask that the Committee have Mr. Davison review the entire Peace and Good Order chapter for validity and make repeals and amendments consistent with his recommendations.

Unfortunately, getting municipalities to ask their attorneys to opine on an ordinance's validity is often not as easy and straightforward as it may appear. As a representative of the New Jersey Libertarian Party who has attempted to get similar ordinances repealed statewide, I have encountered substantial resistance to my efforts. What I've found, bluntly, is 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." Or, perhaps, more insidiously, they wish to keep these ordinance 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 other people to feel uneasy. Hopefully, the Millstone Committee will be bold and upfront enough to ask its municipal attorney to render a legal opinion on the validity its Code and to make the needed changes.

Thank you for your attention to this matter. I look forward to learning whether you are willing to ask your municipal attorney for his opinion on these ordinances

Sincerely,

A handwritten signature in black ink, appearing to read 'John Paff', with a large, stylized flourish extending to the left.

John Paff

Code of the Township of Millstone (Monmouth County)

Last updated by 1971 Code §42-1 & §42-2; Ord. No. 97-12, §I

The following is the existing code provisions relating Peace and Good Order with the proposed modifications contained by Ord. 08-31 which will be voted upon on December 3, 2008 at 8:00 p.m. Additions are shown in underlined text, thus, and deletions are shown in struck out text, ~~thus~~.

3-9 PEACE AND GOOD ORDER.

3-9.1 Definitions.

As used in this section:

~~Common drug addicts shall mean persons who habitually use narcotic drugs, as defined by law, and who obtain such drugs from a person other than one duly authorized by law to treat sick and injured human beings and to use such drugs in connection with such treatment.~~

~~Disorderly persons shall mean all vagrants, vagabonds, common drunkards, common thieves, burglars or pickpockets, common nightwalkers, common prostitutes, common procurers and common drug addicts.~~ RESERVED

3-9.2 Disorderly Acts Enumerated.

All the following named acts shall be deemed disorderly and against the public peace and order and are hereby prohibited within this Township:

a. ~~Loitering in Streets.~~ Any person who, ~~being under the influence of intoxicating liquor,~~ shall loiter or assemble on the streets, at the street corners or in or upon the public places within this Township, and any person who shall, on such streets, at such street corners or in such public places or any railroad train, omnibus or other public conveyance within this Township, indulge in and utter loud and offensive or indecent language, or shall address or make audible and offensive remarks or comments upon any person passing along such streets or public places or in any such railroad train, omnibus or other public conveyance, or shall obstruct or interfere with any person lawfully being in and upon such streets or public places or such train, omnibus or other public conveyance, shall be adjudged a disorderly person.

b. ~~Loitering in Public Places.~~ Any person who, ~~being under the influence of intoxicating liquor,~~ shall loiter in any public or quasi-public place or in or upon any private property not his own within this Township, ~~or who, not being under the influence of intoxicating liquor,~~ shall there indulge in and utter loud and offensive or indecent language, shall be adjudged a disorderly person.

c. Paupers, Beggars and Idlers. All paupers who shall unlawfully return to the Township from which they were legally removed, without a certificate from the City or Township to which they belong, or who shall leave their place of legal settlement, and all persons who shall go about from door to door, or place themselves in streets or passages, to beg or solicit alms or charity, or who shall wander abroad and beg or solicit charity under pretense of being or having been soldiers, marines or seafaring men, or of loss by fire or other casualty, or by war or other pretense or thing, or who shall wander abroad and lodge in taverns, inns, beer houses, houses of entertainment, market houses, outhouses, barns or other places or in the open air, and not give a good account of themselves, and all persons who shall leave or threaten to leave their families to be maintained by the Township or to become chargeable thereto, and all persons who, not having sufficient property or means for their subsistence or support, shall live idly or not engage in some honest employment or not provide for themselves or families, shall be adjudged disorderly persons.

d. Fortune-Tellers. Any person who shall use or pretend to use or have any skill in physiognomy, palmistry or like crafty science, or who shall pretend to tell destinies or fortunes, shall be adjudged a disorderly person.

e. Soliciting. Any person who shall, by word, act, sign or any device, invite or solicit unlawful sexual intercourse or any other unlawful, indecent, lewd or lascivious act, shall be adjudged a disorderly person.

f. Common Thieves, Burglars and Pickpockets. Any person who shall be arrested at any railroad depot, church, banking institution, broker's office, place of public amusement, auction room, store or crowded thoroughfare or other place of public resort or assemblage for business, worship, amusement or other lawful purpose in this Township, and who shall be proved, to the satisfaction of the Judge before whom he shall be brought, to be a common thief, burglar or pickpocket and to have been frequenting or attending such place for an unlawful purpose, shall be adjudged a disorderly person.

g. Carrying Weapons, etc. Any person who shall be apprehended having upon him any picklock, key, crow, jack, bit or other implement with intent to break and enter in any building, or who shall have upon him any pistol, hanger, cutlass, bludgeon or other offensive or dangerous weapon with intent to assault any person, or who shall be found in or near any dwelling house, warehouse, stable, barn, coach house, smokehouse or in any place of public resort or assemblage for business, worship, amusement or other lawful purpose, with intent to steal any goods or chattels, shall be adjudged a disorderly person.

h. Malicious Injury to Property. Any person who shall maliciously destroy, damage or injure property may, where the damage does not exceed the sum of twenty-five (\$25.00) dollars, be adjudged a disorderly person.

i. Unlawful Dumping, etc. Any person who shall dump on or tow to open fields or other private property, without first obtaining the permission of the owner of such property,

any abandoned automobile, automobile parts or other junk, shall be adjudged a disorderly person.

j. Disturbing Libraries or Reading Rooms. Any person who shall, by noisy or disorderly conduct in a public library or reading room, disturb or interrupt the quiet and good order of those who resort to and use such library or reading room for reading or study, shall be adjudged a disorderly person.

k. Injuring School Property, etc. A person who shall enter the building or go upon the lands belonging to a public school district or used and occupied for school purposes by a public school, and shall break, injure or deface such building or any part thereof or the fences or outhouses belonging to or connected with such building or lands, or shall disturb the exercises of the school or molest or give annoyance to the children attending such school or any teacher therein, shall be adjudged a disorderly person.

l. Giving False Alarm of Fire. Any person who shall willfully and maliciously ring or cause to be rung any bell or alarm of any fire company in this Township and thereby give or cause to be given a false alarm of fire, or shall willfully and maliciously send a message of false alarm of fire by telephone or by any other method or means, shall be adjudged a disorderly person.

m. Poisoning Domestic Animals. Any person who places poison or poisoned food in or on any public place or in or on any private premises not owned or occupied by such person, with the intention to injure or kill any domestic animal owned by another person, shall be adjudged a disorderly person.

n. Damaging or Disturbing Private Property. Any person who shall willfully cut any tree, shrub or vine upon, or remove any earth, gravel or sand from, any property belonging to another person in this Township without his consent, or who shall willfully cause injury or damage to or destroy any livestock, poultry, cultivated crop, orchard, fence, sign, signboard, notice or building belonging to any other person while on such person's land without such person's consent, shall be adjudged a disorderly person and, upon conviction, shall be punished accordingly.

o. Erecting Signs, etc. Any person who erects within the limits of this Township any sign or encroachment of any nature without first having obtained permission to do so from the Township Committee or the Board of Chosen Freeholders, as the case may be, shall be adjudged a disorderly person.

p. Tramps. Any person who shall come from a place without this Township or from any county or municipality in the State and has no legal settlement in the place in which he may be found and lives idly and without employment and refuses to work for the usual and common wages given to other persons for like work in the place where he then is, or shall be found going about from door to door or placing himself in the streets, highways or roads to beg or gather alms and can give no reasonable account of himself or his business in such place, shall be adjudged a disorderly person.

q. Damaging Property. Any person who shall maliciously destroy, damage or injure property of another shall be adjudged a disorderly person.

r. Desertion of Family. Any husband or father who deserts or willfully refuses or neglects to provide for and maintain his wife or other family, and any mother who deserts or willfully refuses or neglects to provide for and maintain her child or children or other family, shall be adjudged a disorderly person.

s. Fighting and Other Brawling. Any person or persons fighting or brawling in the Township of Millstone shall be deemed a disorderly person.

t. Urinating and Defecating. Any person who shall urinate or defecate in a public place or in or on any private premises while in public view shall be adjudged a disorderly person.

3-9.3 Violations and Penalties.

Except as otherwise expressly provided by law, a person convicted under any of the provisions of this section or of any supplement thereto or of any other law as a disorderly person shall be liable to the penalty stated in Chapter I, Section 1-5. (1971 Code §42-4; Ord. No. 88-8, §2)

PEACE AND GOOD ORDER CODE
Millstone Township (Monmouth County)

Version that was in effect on December 3, 2008, after enactment of Ord. 08-31

3-9.1 - Definitions. - RESERVED

3-9.2 - Disorderly Acts Enumerated. All the following named acts shall be deemed disorderly and against the public peace and order and are hereby prohibited within this Township:

- a. Loitering in Streets. Any person who, shall loiter or assemble on the streets, at the street corners or in or upon the public places within this Township, and any person who shall, on such streets, at such street corners or in such public places or any railroad train, omnibus or other public conveyance within this Township, indulge in and utter loud and offensive or indecent language, or shall address or make audible and offensive remarks or comments upon any person passing along such streets or public places or in any such railroad train, omnibus or other public conveyance, or shall obstruct or interfere with any person lawfully being in and upon such streets or public places or such train, omnibus or other public conveyance, shall be adjudged a disorderly person.
- b. Loitering in Public Places. Any person who shall loiter in any public or quasi-public place or in or upon any private property not his own within this Township shall there indulge in and utter loud and offensive or indecent language, shall be adjudged a disorderly person.
- c. Paupers, Beggars and Idlers. All paupers who shall unlawfully return to the Township from which they were legally removed, without a certificate from the City or Township to which they belong, or who shall leave their place of legal settlement, and all persons who shall go about from door to door, or place themselves in streets or passages, to beg or solicit alms or charity, or who shall wander abroad and beg or solicit charity under pretense of being or having been soldiers, marines or seafaring men, or of loss by fire or other casualty, or by war or other pretense or thing, or who shall wander abroad and lodge in taverns, inns, beer houses, houses of entertainment, market houses, outhouses, barns or other places or in the open air, and not give a good account of themselves, and all persons who shall leave or threaten to leave their families to be maintained by the Township or to become chargeable thereto, and all persons who, not having sufficient property or means for their subsistence or support, shall live idly or not engage in some honest employment or not provide for themselves or families, shall be adjudged disorderly persons.
- d. Fortune-Tellers. Any person who shall use or pretend to use or have any skill in physiognomy, palmistry or like crafty science, or who shall pretend to tell destinies or fortunes, shall be adjudged a disorderly person.
- e. Soliciting. Any person who shall, by word, act, sign or any device, invite or solicit unlawful sexual intercourse or any other unlawful, indecent, lewd or lascivious act, shall be adjudged a disorderly person.

f. Common Thieves, Burglars and Pickpockets. Any person who shall be arrested at any railroad depot, church, banking institution, broker's office, place of public amusement, auction room, store or crowded thoroughfare or other place of public resort or assemblage for business, worship, amusement or other lawful purpose in this Township, and who shall be proved, to the satisfaction of the Judge before whom he shall be brought, to be a common thief, burglar or pickpocket and to have been frequenting or attending such place for an unlawful purpose, shall be adjudged a disorderly person.

g. Carrying Weapons, etc. Any person who shall be apprehended having upon him any picklock, key, crow, jack, bit or other implement with intent to break and enter in any building, or who shall have upon him any pistol, hanger, cutlass, bludgeon or other offensive or dangerous weapon with intent to assault any person, or who shall be found in or near any dwelling house, warehouse, stable, barn, coach house, smokehouse or in any place of public resort or assemblage for business, worship, amusement or other lawful purpose, with intent to steal any goods or chattels, shall be adjudged a disorderly person.

h. Malicious Injury to Property. Any person who shall maliciously destroy, damage or injure property may, where the damage does not exceed the sum of twenty-five (\$25.00) dollars, be adjudged a disorderly person.

i. Unlawful Dumping, etc. Any person who shall dump on or tow to open fields or other private property, without first obtaining the permission of the owner of such property, any abandoned automobile, automobile parts or other junk, shall be adjudged a disorderly person.

j. Disturbing Libraries or Reading Rooms. Any person who shall, by noisy or disorderly conduct in a public library or reading room, disturb or interrupt the quiet and good order of those who resort to and use such library or reading room for reading or study, shall be adjudged a disorderly person.

k. Injuring School Property, etc. A person who shall enter the building or go upon the lands belonging to a public school district or used and occupied for school purposes by a public school, and shall break, injure or deface such building or any part thereof or the fences or outhouses belonging to or connected with such building or lands, or shall disturb the exercises of the school or molest or give annoyance to the children attending such school or any teacher therein, shall be adjudged a disorderly person.

l. Giving False Alarm of Fire. Any person who shall willfully and maliciously ring or cause to be rung any bell or alarm of any fire company in this Township and thereby give or cause to be given a false alarm of fire, or shall willfully and maliciously send a message of false alarm of fire by telephone or by any other method or means, shall be adjudged a disorderly person.

m. Poisoning Domestic Animals. Any person who places poison or poisoned food in or on any public place or in or on any private premises not owned or occupied by such person,

with the intention to injure or kill any domestic animal owned by another person, shall be adjudged a disorderly person.

n. Damaging or Disturbing Private Property. Any person who shall willfully cut any tree, shrub or vine upon, or remove any earth, gravel or sand from, any property belonging to another person in this Township without his consent, or who shall willfully cause injury or damage to or destroy any livestock, poultry, cultivated crop, orchard, fence, sign, signboard, notice or building belonging to any other person while on such person's land without such person's consent, shall be adjudged a disorderly person and, upon conviction, shall be punished accordingly.

o. Erecting Signs, etc. Any person who erects within the limits of this Township any sign or encroachment of any nature without first having obtained permission to do so from the Township Committee or the Board of Chosen Freeholders, as the case may be, shall be adjudged a disorderly person.

p. Tramps. Any person who shall come from a place without this Township or from any county or municipality in the State and has no legal settlement in the place in which he may be found and lives idly and without employment and refuses to work for the usual and common wages given to other persons for like work in the place where he then is, or shall be found going about from door to door or placing himself in the streets, highways or roads to beg or gather alms and can give no reasonable account of himself or his business in such place, shall be adjudged a disorderly person.

q. Damaging Property. Any person who shall maliciously destroy, damage or injure property of another shall be adjudged a disorderly person.

r. Desertion of Family. Any husband or father who deserts or willfully refuses or neglects to provide for and maintain his wife or other family, and any mother who deserts or willfully refuses or neglects to provide for and maintain her child or children or other family, shall be adjudged a disorderly person.

s. Fighting and Other Brawling. Any person or persons fighting or brawling in the Township of Millstone shall be deemed a disorderly person.

t. Urinating and Defecating. Any person who shall urinate or defecate in a public place or in or on any private premises while in public view shall be adjudged a disorderly person.

3-9.3 Violations and Penalties.

Except as otherwise expressly provided by law, a person convicted under any of the provisions of this section or of any supplement thereto or of any other law as a disorderly person shall be liable to the penalty stated in Chapter I, Section 1-5. (1971 Code §42-4; Ord. No. 88-8, §2)

PEACE AND GOOD ORDER CODE
Millstone Township (Monmouth County)

Version that was in effect on March 18, 2009, after enactment of Ord. 09-05¹

Section 3-9.1 Definitions. As used in this Chapter, the following terms will have the meanings indicated:

For purposes of this Chapter only, a "public place" means those areas used by the public, including, but not limited to, streets, sidewalks, parks, open spaces, commercial parking lots, vehicles of mass transportation and property owned by the Township, County, State or any other sovereign entity. An otherwise private place may become a public place upon the issuance of a permit or license granting permission for the general public to access the property for a specific purpose.

"Public view" means the area visible to persons in or on a public place.

Section 3-9.2 Unnecessary Noise. No person shall, within any building or upon any premises in the Township, permit, make or continue, or cause to be permitted, any unnecessary noise which disturbs any persons.

Section 3-9.3 Music and Other Sounds Emitted from Buildings. No person shall maintain or operate in any building or upon any premises in the Township any radio devices, mechanical musical instruments or devices of any kind, where the sound transmitted is cast directly upon the public streets and places where such device is maintained and operated for advertising purposes or for the purpose of attracting attention of the passing public, or which is so placed and operated that sounds emanating from said device can be heard to the annoyance or inconvenience of persons walking upon any street or public place or in neighboring residences.

Section 3-9.4 Unnecessary Vehicle Noise. No person shall use any vehicle or motorcycle in such a manner so as to create unnecessary grinding, grating, unmuffled exhaust or rattling noises or in such a manner during acceleration, deceleration or negotiating turning movements so as to cause a shrill, piercing or screeching noise from the tires of said vehicle or motorcycle during such acceleration, deceleration or turning movement.

Section 3-9.5 Disrobing in Public. No person shall undress or disrobe, or dress or robe, in any public place, except such place as may be provided for such use. This section will not apply to outer-clothing or to children under the age of five (5) years.

Section 3-9.6 Lodging in Parked Automobiles. No person shall, within the limits of the Township, lodge in any automobile, truck, camping or recreation vehicle or similar vehicle in any public place.

¹ An ordinance repealing chapter iii (police regulations), section 3-9 (peace and good order) and establishing a new section 3-9 (peace and good order) of the revised.

Section 3-9.7 Obstruction of Sidewalks. No person shall park any motor vehicle so that it obstructs any public sidewalk in the Township.

Section 3-9.8 Urination and Defecation in Public Places. No person shall urinate or defecate in any public place, or private place within public view or in any other place open to and used by the public.

Section 3-9.9 Violations and Penalties. Any person violating the terms of this Chapter, upon conviction in municipal court, will be subject to the penalty as stated in Chapter I, Section 1-5. III