

Netcong Borough (Morris County) passed an ordinance on September 11, 2008 that repealed Chapter 202 (Loitering) in its entirety as well as several sections of Chapter 220 (Peace and Good Order.)

Following is a copy of the repeal ordinance (Ord. 2008-13) and the Libertarian Party's December 1, 2007 letter to the Mayor and Council and its April 7, 2008 letter to the Borough Administrator.

BOROUGH OF NETCONG
COUNTY OF MORRIS, STATE OF NEW JERSEY
Ordinance No. 2008-13

AN ORDINANCE REPEALING CHAPTER 202, LOITERING, AS WELL AS
NUMEROUS SECTIONS OF CHAPTER 220, PEACE AND GOOD ORDER OF THE
CODE OF THE BOROUGH OF NETCONG, MORRIS COUNTY, NEW JERSEY

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

Section 1. Chapter 202, Loitering, is hereby repealed in its entirety and is reserved for future use.

Section 2. The following sections of Chapter 220, Peace and Good Order, are hereby repealed in their entirety and are reserved for future use:

- 220-1. Definitions and usage.
- 220-2. Public intoxication.
- 220-4. Public disturbance or disorderly assemblage.
- 220-5. Loitering; offensive remarks; obstructing passage.
- 220-6. Objectionable conduct; trespassing.
- 220-7. Other indecent conduct.
- 220-8. Indecent literature, pictures or performances.
- 220-9. Soliciting unlawful sexual intercourse.
- 220-10. Breaches of the peace.
- 220-11. Indecent exposure or dress.
- 220-12. Indecent writings in public places.
- 220-15. Peeping Toms.
- 220-16. Permitting disorderly house.
- 220-17. Keeping disorderly house or house of ill fame.
- 220-19. Begging without permit.
- 220-20. Gambling, cockfighting and prizefighting.
- 220-21. Faro, roulette and similar games.
- 220-22. Slot machines and similar devices.
- 220-36. Unlicensed alcoholic beverage sales; sales to minors.

Section 3. This Ordinance may be renumbered for codification purposes.

Section 4. All Ordinances of the Borough of Netcong, which are inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of such inconsistency.

Section 5. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.

Section 6. This Ordinance shall take effect immediately upon final passage, approval and publication as required by law.

NOTICE IS HEREBY GIVEN, that the foregoing Ordinance was introduced in writing at a meeting of the Borough Council of the Borough of Netcong, County of Morris and State of New Jersey, held on the 14th day of August, 2008, introduced and read by title and passed on the first reading and that the said Governing Body will further consider the same for second reading and final passage thereon at a meeting to be held on the 14th day of September, 2008, at 7:30 p.m., prevailing time, at the Municipal Building in said Borough, at which time and place a public hearing will be held thereon by the Governing Body and all persons and citizens in interest shall have an opportunity to be heard concerning same.

INTRODUCED: August 14, 2008

ADOPTED:

Attest:

Dolores Dalessandro, Borough Clerk

John Paff

P.O. Box 5424

Somerset, New Jersey 08875-5424

E-mail – CJSC@POBOX.COM

December 1, 2007

Telephone – 732-873-1251

Fax – 908-325-0129

Ralph Blakeslee - Borough Administrator
Borough of Netcong
23 Maple Avenue
Netcong, NJ 07857

(via PDF to rblakeslee@netcong.org)

Dear Mr. Blakeslee:

I write to you, as Borough Administrator because it is your duty to “receive and reply to all inquiries and complaints concerning the borough's business and provide information and assistance to resolve them.” Ord. § 5.5(A)(18). I have two “inquiries and complaints” to bring to your attention.

First, I visited the Borough's website but could not find an Open Public Records Act records request form. As you are probably aware, the Borough is not required to accept record requests except for those submitted on the Borough's official form¹. Would you please upload the Borough's form to the website so that it is available for download? Also, in the meantime, would you email or fax me a request form so that I can make a records request?

Second, I had an opportunity to review the on-line version of § 202, the Borough's loitering ordinance. It is nearly identical to Flemington's former loitering ordinance, a copy of which is enclosed. Based on my suggestion, however, Flemington repealed its loitering ordinance in 2003 (see copy of repeal attached) because that borough's municipal attorney (Peter A. Buchsbaum, who is currently a Superior Court Judge) found the ordinance invalid because “it is preempted by the NJ Criminal Code.” (quoted from the repeal ordinance.).

Since Netcong's loitering ordinance is substantially the same as Flemington's it would seem reasonable to assume that it is likewise invalid. At the very least, I believe that it would be prudent for the Borough to ask its municipal attorney to review the loitering ordinance and opine as to its validity. Will Netcong do this?

As a representative of the New Jersey Libertarian Party who has attempted to get similar ordinances repealed statewide, I have encountered incredible resistance to my efforts. What I've found, bluntly, is that municipal governments are often well aware that their loitering (and other ordinances such as Netcong's “Peace and Good Order” ordinance) are invalid but wish to keep them on the books so that the local police can use them to harass those who have committed no actual

¹ See, Government Records Council Advisory Opinion No. 2006-01.

crime, but who, by their very presence, cause other people to feel uneasy. It is my hope that Netcong doesn't resist my attempt to test the ordinance's validity.

Thank you for your attention to these matters. I look forward to your response.

Sincerely,

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

John Paff

agent, the litter shall be removed from the lands in question under the direction of the health officer or police chief.

c. *Charges Included in Tax Bill.* In all cases where the borough has effected the removal of litter or has paid for its removal under the direction of the health officer or the police chief, the health officer or police chief, whichever the case may be, shall certify the cost to the borough council. The council shall examine the certificate, and if found correct shall charge the cost shown against the lands involved. The amount charged shall forthwith become a lien upon the lands and shall be added to and become part of the taxes next to be assessed and levied upon such lands, the same to bear interest at the same rate as taxes, and shall be collected and enforced by the same officers and in the same manner as taxes.

3-2 Loitering.

3-2.1 *Definitions.* As used in this section:

a. "Loitering" shall mean remaining idle or walking aimlessly about in essentially one location.

b. "Public place" shall mean a place to which the public has access and shall include any public building and grounds, street, highway, road, alley, boardwalk or sidewalk. It shall also include the front or the neighborhood of a store, shop, restaurant, tavern or other place of business, and public grounds, areas, parks and marinas, as well as parking lots or other vacant private property not owned by or under the control of the person charged with violating this section or, in the case of a minor, not owned or under the control of his parent or guardian.

c. "Parent" or "guardian" shall mean and include any adult person having care or custody of a minor, whether by reason of blood relationship, the order of any court or otherwise.

3-2.2 *Certain Types of Loitering Prohibited.* No person shall loiter in a public place in such a 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 a public place. This paragraph 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.

3-2.3 *Discretion 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 subsection 3-2.2, 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 police officer shall be guilty of a violation.

3-2.4 *Loitering by Minors; Notice; Presumption.* No parent or guardian of a minor under the age of 18 years shall knowingly permit that minor to loiter in violation of this section. Whenever any minor under the age of 18 years is charged with a violation of this section, his parent or guardian shall be notified of this fact by the chief of police or any other person designated by the chief of police to give such notice. If at any time within 30 days following the giving of notice, the minor to whom such notice relates again violates 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.

3-3 Abandoned Motor Vehicles.

3-3.1 *Definition.* "Abandoned motor vehicle" shall mean any vehicle propelled otherwise than by muscular power, including vehicles which run upon rails or tracks, which are found in any public street, highway or lands and either not bearing current registration plates or, if bearing current registration plates, remaining stationary and unused on the public street, highway or lands for more than 14 days consecutively.

3-3.2 *Prohibition.* No person shall abandon a motor vehicle upon the public streets, highways and lands.

3-3.3 *Police Department Possession.* All abandoned motor vehicles shall be taken in possession by the police department and removed to a storage place. The police department shall then follow the procedures established by R.S. 39:10A to sell the abandoned motor vehicle at public auction.

**BOROUGH OF FLEMINGTON
COUNTY OF HUNTERDON**

ORDINANCE 2003 - 31

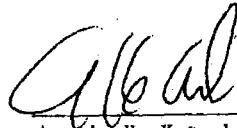
**AN ORDINANCE TO AMEND SUBSECTION 3-2
"LOITERING"
OF THE POLICE DEPARTMENT OF THE
BOROUGH OF FLEMINGTON**

BE IT ORDAINED by the Mayor and Common Council of the Borough of Flemington that subsection 3-2 "Loitering" of the Police Department be deleted in its entirety as it is preempted by NJ Criminal Code.

BE IT FURTHER ORDAINED that this Ordinance shall take effect immediately after final passage and publication according to law.

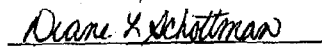
Introduced: October 13, 2003

Adopted: October 27, 2003



Austin H. Kutscher Jr. Mayor

Attest:


Diane L. Schottman, 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

April 7, 2008

Ralph Blakeslee - Borough Administrator
Borough of Netcong
23 Maple Avenue
Netcong, NJ 07857

(via PDF to rblakeslee@netcong.org)

Dear Mr. Blakeslee:

I write, both individually and in my capacity as Chairman of the New Jersey Libertarian Party's Preempted Ordinance Repeal Project to follow up on my December 1, 2007 letter to the Mayor and Council (attached for your ready reference) and my voicemail to you this afternoon.

I don't recall receiving a response to the part of my letter concerning the loitering ordinance. Can you advise me of whether the Borough has repealed its ordinance, decided not to repeal it, or hasn't yet had a chance to consider the question?

Thank you for your attention to this matter.

Sincerely

John Paff

John Paff

P.O. Box 5424

Somerset, New Jersey 08875-5424

E-mail – CJSC@POBOX.COM

December 1, 2007

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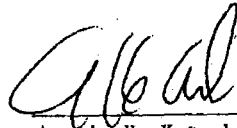
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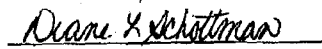
Introduced: October 13, 2003

Adopted: October 27, 2003



Austin H. Kutscher Jr. Mayor

Attest:


Diane L. Schottman, Clerk