



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

August 25, 2009

Hon. Harry A. Moore, Mayor, and Members of the
Oldmans Township Committee

PO Box 416

Pedricktown, NJ 08067 (via e-mail only to SMiller@OldmansTownship.com)

Dear Mayor Moore and Committee Members

I write, both individually and in my capacity as Chairman of the New Jersey Libertarian Party's Preempted Ordinance Repeal Project, seeking repeal of various sections of Chapter 125 (Peace and Good Order) of the Oldmans Township Code.

§ 125-10 of the Township Code states:

125-21 Loitering; offensive speech.

No person shall loiter on the streets or highways and utter loud and offensive or indecent language or make offensive remarks to or upon any person passing along such streets or highways or obstruct or interfere with any person lawfully being in or upon such streets or highways.

Yet, loitering ordinances are, except in a few narrow cases¹, invalid in New Jersey because the Legislature, when enacting the Criminal Code in 1979, specifically declined to include a loitering prohibitions within the Code. The Legislature was concerned that "vagrancy and loitering statutes have long suffered from constitutional infirmity and have been criticized as inviting official harassment and discriminatory enforcement." See State v. Crawley, 90 N.J. 241, 247 (1982). It follows, therefore, that no municipality, such as Oldmans Township, is allowed to locally prohibit loitering or vagrancy when the Legislature has decided to decriminalize them. Id. at 251.

Earlier this year, I informed the Pilesgrove Township Mayor and Committee that its loitering provision, which was identical to Oldmans Township's, had been invalidated by state law. On March 19, 2009, Pilesgrove responded by repealing three sections of its Peace

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

and Good Order code, the loitering provision being one of those repealed. (See the public notice of Pilesgrove's repealer, attached as Exhibit Page 1).

One of the other sections that Pilesgrove repealed was § 97-10, which is virtually identical to Oldmans' §125-13, which states:

§ 125-13 Interference with peace officers.

No person shall hinder or obstruct any township officer in the performance of his duties, nor shall any person willfully refuse to assist any township official who lawfully called upon him to do so in the execution of any process or in the suppression of any breach of the peace or disorderly conduct or in case of an escape or when such officer is resisted in the discharge of his duty, nor shall any person knowingly resist or oppose any officer or person authorized by law in serving or attempting to serve any writ, bill, order or process or when making any arrest, whether with or without a warrant.

That section was repealed because it was superseded and preempted by N.J.S.A. 2C:29-1 (Obstructing administration of law or other governmental function).

I have a specific request. Would you, at the Committee's September 2, 2009 meeting, ask Township Solicitor John Hoffman to review Oldmans' Peace and Good Order chapter in its entirety and render an opinion as to which parts should be repealed?

Thank you for your attention to this matter. I look forward to receiving your or your attorney's response.

Sincerely,

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

John Paff

P.S. Other than Pilesgrove, I have also worked with Elmer and Woodstown Boroughs to have them repeal parts of their codes. For a complete list of towns that have repealed their codes as a result of the Libertarian Party's efforts, see <http://www.lpcnj.org/OGTF/Loiter.html>

cc. John Hoffman, Esq. (via Fax only to 856-769-4748)

Published: Today's Sunbeam, February 15, 2009

PUBLIC NOTICE
PILESGROVE TOWNSHIP
ORDINANCE 09-04

AN ORDINANCE AMENDING THE CODE OF THE TOWNSHIP OF PILESGROVE TO DELETE
CERTAIN SECTIONS OF CHAPTER 97.

WHEREAS, Section 97-4, addressing loitering, Section 97-10, addressing interference with police, and Section 97-14, addressing other improper conduct are set forth in Chapter 97 of the Code of Pilesgrove Township as quasi-criminal offenses, and

WHEREAS, the Township Committee requested that Mr. Michael M. Mulligan, Esq., Solicitor of Pilesgrove Township, opine concerning the subject Code sections concerning whether it is likely one or all would be adjudged by a court of competent jurisdiction as being pre-empted by laws enacted by the Legislature of the New Jersey or as being drafted so as to be overly vague and unenforceable, and

WHEREAS, the Solicitor holds the opinion that the subject ordinances ought to be repealed as they likely shall be determined to pre-empted by legislation or they are otherwise unenforceable in a quasi-criminal prosecution.

NOW, THEREFORE, BE IT ORDAINED that Chapter 97 of the Code of Pilesgrove is hereby amended by the repeal of Section 97-4, 97-10 and 97-14.

THIS ORDINANCE shall take effect upon posting, publication and final passage in the manner prescribed by law. Notice is hereby given that the foregoing proposed Ordinance was introduced and passed by the Township Committee of the Township of Pilesgrove at a meeting held on February 10, 2009 and will be considered for final passage after a public hearing at a meeting to be held by the Township Committee of Pilesgrove Township at the Municipal Building on March 10, 2009 at 7:00 PM.

Maureen R. Abdill, Clerk Cost \$53.20 2/15/ 1t (2543868)

Published: Today's Sunbeam, March 25, 2009

PUBLIC NOTICE
THE TOWNSHIP OF PILESGROVE

NOTICE OF ADOPTION ORDINANCE 09-02 PILESGROVE TOWNSHIP AN ORDINANCE TO
EXCEED THE MUNICIPAL BUDGET APPROPRIATION LIMITS AND TO ESTABLISH A CAP
BANK ORDINANCE 09-04 AN ORDINANCE AMENDING THE CODE OF THE TOWNSHIP OF
PILESGROVE TO DELETE CERTAIN SECTIONS OF CHAPTER 97 ORDINANCE 09-05 AN
ORDINANCE AMENDING SECTION 20-7 OF THE CODE OF THE TOWNSHIP OF PILESGROVE

Take notice that the above captioned Ordinances were adopted on second and final reading at a meeting of the Township Committee of the Township of Pilesgrove in the County of Salem and State of New Jersey held on the 19th day of March 2009.

Maureen R. Abdill, Clerk Cost \$30.80 3/25/ 1t (2546722)

JOHN G. HOFFMAN

ATTORNEY AT LAW

11 NORTH MAIN STREET, WOODSTOWN, NEW JERSEY 08098 (856) 769-3100

September 3, 2009

Mr. John Paff, Chairman
New Jersey Libertarian Party
P. O. Box 5424
Somerset, NJ 08875-5424

Re: Oldmans Township

Dear Mr. Paff:

I discussed your request at the Oldmans Township Committee meeting on September 2, 2009. It was agreed the Ordinance you referenced will be repealed. As you may recall, I forwarded to you a letter requesting what other ordinances you thought should likewise be repealed as I would be more than happy to include same in one ordinance.

Further, please be advised the Township was directed not to issue any summonses for a violation of your cited Ordinance.

Your consideration is appreciated.

Very truly yours,

\s\ John G. Hoffman

John G. Hoffman

JGH:sdp

cc Ms. V. Susan Miller, Clerk (via email)



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

September 8, 2009

V. Susan Miller, Clerk
Oldmans Township
PO Box 416
Pedricktown, NJ 08067 (via e-mail only to SMiller@OldmansTownship.com)

Dear Ms. Miller:

I write, both individually and in my capacity as Chairman of the New Jersey Libertarian Party's Preempted Ordinance Repeal Project, in response to Township Solicitor John G. Hoffman's August 26, 2009 and September 3, 2009 letters.

Would you please forward this letter and attachment to Mr. Hoffman? I am sending it to you instead of him directly because I do not know his e-mail address and because I believe that an e-mailed PDF file is more useful than a fax.

Also, I ask that you please convey my thanks to Mayor Moore, the Committee members and Mr. Hoffman for their cooperation and willingness to undertake a review of the Peace and Good Order code.

Sincerely

John Paff

Review of Oldmans Township Peace and Good Order Code

§ 125-1 Firearms.

No person shall fire or discharge any pistol, revolver, rifle, gun, air gun or fowling piece or any kind of firearm or cannon in, on, along or near any street or other public area.

I do not believe that § 125-1 is preempted. Indeed regulation of firearm discharges is expressly granted to municipalities by N.J.S.A. 40:48-1.

§ 125-2 Slingshots and similar weapons prohibited.

It shall be unlawful to use a slingshot or other similar weapon within the limits of the Township of Oldmans.

Possession of a slingshots is already prohibited by N.J.S.A. 2C:39-3(e). But, unlike the ordinance, the statute provides exceptions for members of law enforcement and the military. See N.J.S.A. 2C:39-3(g). I believe that § 125-2 is preempted, but even if it isn't what use is an ordinance prohibiting the USE of a slingshot when there is already a state prohibiting POSSESSION of a slingshot.

§ 125-3 Throwing and shooting objects prohibited.

No person shall throw or cause to be thrown any stone, brick or other missile or shoot a bow and arrow or any other pointed instrument at any person or persons or at any domestic animal or bird or on any of the streets or elsewhere.

I believe that the part of § 125-3 making it illegal to throw something or shoot a bow and arrow at a PERSON, as opposed to an animal or bird is preempted, or at least rendered meaningless, by N.J.S.A. 2C:12-1.

§ 125-4 Carrying dangerous weapons.

No person shall carry any revolver, pistol, zip gun or other firearm or other instrument of the kind known as a blackjack, slingshot, billy, sandclub, sandbag, bludgeon, metal knuckles, dagger, dirk, dangerous knife, stiletto, bomb or other high explosives in or about one's clothes or person or in any automobile, carriage, motorcycle or other vehicle, except as provided by law.

I believe that § 125-4 is preempted, or at least rendered meaningless, by N.J.S.A. 2C:39-2 and 3.

§ 125-5 Obscene literature.

No person shall sell or offer to sell indecent, obscene or lewd pictures, books or things or exhibit or perform any indecent, obscene or lewd play or other representation.

I believe that § 125-5 has is preempted. See, e.g. Egg Harbor City v. Colasuonno, 182 N.J. Super. 110 (Ch. Div. 1981).

§ 125-6 Nudity.

No person shall bathe, swim or be in a state of nudity in any public place.

The power of a municipality to enact a public nudity ordinance was expressly affirmed by State v. Vogt, 341 N.J. Super. 407 (App. Div. 2001).

§ 125-7 Disrobing in vehicle.

No person shall disrobe in any truck, auto or vehicle while the same is upon a street, parking area, park or other public place.

I believe that the analysis regarding § 125-6 also applies to § 125-7.

§ 125-8 Deposit of waste materials.

No person shall deposit any refuse, rubbish or waste matter or any waste materials of any kind upon any field, vacant lot or building plot or upon any public street or land directly abutting the public street unless the same shall be placed in closed containers and only for the removal thereof.

I believe that municipalities are empowered to enact ordinances dealing with littering and disposal of waste.

§ 125-9 Deposit of waste materials in water bodies.

No person shall discard any tin cans, bottles, garbage, refuse or waste of any kind whatsoever into the waters of any pond, stream or lake or into water adjacent thereto.

I believe that municipalities are empowered to enact ordinances dealing with littering and disposal of waste.

§ 125-10 Interference with Fire Department.

No person shall, during an alarm of fire, hinder, prevent or deter by any device whatsoever any fireman or other person from rendering lawful assistance in abating or quelling such fire or hinder or interfere with any fireman going to or returning from the place where the building or other property is on fire or from which an alarm proceeds, nor shall any person

hinder or obstruct the passage of any fire engine, hook or ladder truck, hose cart or any fire apparatus in going to or from the place from which an alarm or fire proceeds to where any building or other property may be burning.

I believe that § 125-10 is preempted, or at least rendered unnecessary, by N.J.S.A. 2C:29-1.

§ 125-11 Damaging fire equipment.

No person shall injure, damage or mutilate any fire truck, hook and ladder, hose ladders, buckets or other fire apparatus belonging to the Fire Departments within the township.

I believe that § 125-11 is preempted, or at least rendered unnecessary, by N.J.S.A. 2C:17-3.

§ 125-12 Damaging fire hydrants.

No person shall open, injure, destroy, deface, mutilate, break or tamper with any fire hydrant in any public street or public place, except members of the Township Fire Department actually engaged in the performance of their duties.

I believe that § 125-12 is preempted, or at least rendered unnecessary, by N.J.S.A. 2C:17-3.

§ 125-13 Interference with peace officers.

No person shall hinder or obstruct any township officer in the performance of his duties, nor shall any person willfully refuse to assist any township official who lawfully called upon him to do so in the execution of any process or in the suppression of any breach of the peace or disorderly conduct or in case of an escape or when such officer is resisted in the discharge of his duty, nor shall any person knowingly resist or oppose any officer or person authorized by law in serving or attempting to serve any writ, bill, order or process or when making any arrest, whether with or without a warrant.

Oldmans Township has already agreed to repeal § 125-13.

§ 125-14 Posting notices on private property.

No person shall paste, write, clip, paint, nail, clamp or otherwise fasten, inscribe or affix any notice, placard or advertisement against or upon any wall, gate, house, store, shop, shed, fence, rock, stump, tree, shrub, bush, promontory building or structure without the consent of the owner or occupant of the same, except when done by a public officer in the performance of his duties.

I believe that the municipality is empowered to enact § 125-14 under authority of N.J.S.A. 40:49-2.

§ 125-15 Posting notices on public buildings.

No person shall paste, write, clip, paint, nail, clamp or otherwise fasten or affix any notice, placard or advertisement upon any public building, sidewalk, street, fence, curbstone, wall, park or other public property or place within the limits of said township, except with the permission of the Township Committee.

Suppose a candidate for Oldmans Township Committee who is out of favor with the present Committee members posts political campaign signs, without the Committee's permission alongside the Township streets, within the Township right of way, 30 days prior to the election. Would the Township's enforcement of § 125-15 against the candidate and his or her signs violate the candidate's free expression rights?

In City of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984) the Supreme court held that it was permissible for Los Angeles to suppress the posting of all political messages, such as campaign signs, from public property. Yet, I question whether Oldmans Township, which is very different than Los Angeles, could show a substantial governmental interest in reducing visual clutter is significant enough to justify such a broad restriction on political speech. See Passaic Daily News v. City of Clifton, 200 N.J. Super. 468, 475 (Law Div. 1985).

§ 125-16 Advertisements, handbills, circulars and pamphlets.

It shall be unlawful for any person to throw or place in the streets, highways, public places or in automobiles or other vehicles parked along the public highways of the Township of Oldmans or in a vacant lot or in the yards or upon the porches of dwellings or other buildings within the limits of the township any paper, advertisement, handbill, circular or pamphlet, provided that nothing herein contained shall be held to apply to newspapers and personally addressed envelopes, and also provided further that nothing herein contained shall apply to papers, advertisements, handbills, circulars or pamphlets being placed on the porches of dwellings or other buildings when they are placed in mailboxes or other receptacles so that they will not be blown in the yards and around the public streets of the township.

I believe that the municipality is empowered to enact § 125-16 under authority of N.J.S.A. 40:49-2. I would be concerned about constitutionality if the ordinance prohibited distributing handbills to passersby. But, it only prohibits throwing or placing them in the streets, so there are no apparent constitutional concerns.

§ 125-17 Gaming houses.

No person shall keep or maintain a gaming house, house of ill fame or a disorderly house or allow or permit in any house, shop, store or other building or on any premises owned or occupied by him or her any faro table, faro bank, roulette wheel or other device or game of chance for the purpose of gaming or any cockpit or other place for the exhibition of animals while engaged in fighting, and no person shall hold in any house, shop, store or other building or on any premises or permit to be held in any house, shop, store or other building or on any premises or any building owned or occupied by him or her any dog fight, cockfight or any sparring contest for a purse or prize money.

§ 125-17 appears to be an antiquated ordinance with little or no relevance today. It seems to me that the aim of the ordinance is satisfied by N.J.S.A. 2C:37-2's prohibition against "promoting gambling." Accordingly, I believe that § 125-17 is either preempted or rendered unnecessary.

§ 125-18 Gambling.

No person shall play for money or other valuable thing at cards, billiards, pool tables, bowls or shuffleboard, at faro bank or other bank of the like kind under any denomination whatever, at dice or any other game with one or more die or dice or with any other instrument or device in the nature of dice having one or more figure or figures, number or numbers thereon, or roulette or other device or game of chance, whether as bank players, dealers or otherwise, for the purpose of gaming.

It appears that the gambling statutes, N.J.S.A. 2C:37-1 et seq., exempt mere "players" from their scope. Since the statutes do not prohibit private gambling, such as two people betting on the outcome of a game of billiards, it does not appear that Oldmans Township, by ordinance, may prohibit what the statutes permit. Accordingly, I believe that § 125-18 ought to be repealed.

§ 125-19 Gambling devices.

No person shall play for money or other thing with a slot machine or device in the nature of a slot machine or with any other instrument, engine, apparatus or device having one or more figure or figures, number or numbers thereon, and no person shall have or keep in his or her place of business or other premises any such slot machine or device in the nature of a slot machine which may be used for the purpose of paying any money or other valuable thing.

For the reasons expressed regarding § 125-18, I believe that the part of § 125-19 that seeks to punish "players" cannot stand. The part of § 125-19 that makes it illegal to possess

a slot machine is preempted or at least rendered unnecessary by N.J.S.A. 2C:37-7.

§ 125-20 Attending gaming house.

No person shall resort to or frequent or be found in a gaming house, house of ill fame or a disorderly house or in any house, shop, store or building or on any premises where there are intoxicating beverages illegally sold or possessed or where there is the playing of any faro bank, roulette or other device or game of chance or where there is the playing for money or other valuable thing at cards, billiards, pool, bowls, shuffleboard, dice or any other game with one or more die or dice or with any other instrument or device in the nature of dice having one or more figure or figures, slot machine or device in the nature of a slot machine or any other instrument, engine, apparatus or device having one or more figures or numbers thereon.

For the reasons expressed regarding § 125-18, I believe that § 125-20, which seeks to punish "players" or being in a place where gambling is occurring, cannot stand.

§ 125-21 Loitering; offensive speech.

No person shall loiter on the streets or highways and utter loud and offensive or indecent language or make offensive remarks to or upon any person passing along such streets or highways or obstruct or interfere with any person lawfully being in or upon such streets or highways.

Oldmans Township has already agreed to repeal § 125-21.

§ 125-22 Noise.

No person shall create any unreasonably loud disturbance or noise of such character, intensity or duration as to disturb the peace, quiet and comfort of the neighboring inhabitants or to the annoyance or inconvenience of travelers on the street or persons in neighboring premises.

The Township has the power to enact ordinances that prohibit excess noise. State v. Powell, 250 N.J. Super. 1, (App. Div. 1991). I note that § 125-22's use of the word "unreasonably" addresses the concern expressed in State v. Friedman, 304 N.J. Super. 1 (App. Div. 1997)

§ 125-23 Loudspeakers and amplifiers.

No person shall use or operate any sound truck or any loudspeaker or sound amplifier or radio or phonograph with a loudspeaker or sound amplifier or any vehicle upon the streets of the township without the approval of the Township Committee.

I believe that "sound amplifier OR any vehicle" is supposed to read "sound amplifier ON any vehicle." I think that the ordinance is overbroad because virtually every car radio has a "sound amplifier." Although I haven't researched it, I do not believe that there is any constitutional right for a person to use a loudspeaker to propagate his or her political speech. To the extent that there is such a constitutional right, § 125-23 may violate it.

§ 125-24 Operating a motor vehicle emitting loud noise.

No person shall operate an automobile, truck or other motor vehicle in the Township of Oldmans in such a manner or so constructed or loaded that it shall create or emit an unreasonably loud or harsh sound disturbing the peace, quiet and comfort of the citizens of the township.

As stated under § 125-22, the Township is empowered to regulate unreasonable noise. But, it appears that N.J.S.A. 39:3-70 and N.J.S.A. 39:4-78 already cover much, if not all, of the conduct that the ordinance seeks to address.

§ 125-25 Exploding fireworks.

No person shall fire off or explode any rocket, squib, firecracker or any kind of fireworks or other explosive within the limits of the township.

I believe that fireworks regulation is a proper subject for municipal regulation and note that it is expressly mentioned in N.J.S.A. 40:48-1.

JOHN G. HOFFMAN

ATTORNEY AT LAW

11 NORTH MAIN STREET, WOODSTOWN, NEW JERSEY 08098 (856) 769-3100

September 15, 2009

VIA EMAIL - paff@pobox.com

Mr. John Paff, Chairman
New Jersey Libertarian Party
P. O. Box 5424
Somerset, NJ 08875-5424

Re: Oldmans Township

Dear Mr. Paff:

I greatly appreciate your analysis of the Oldmans Code and will undertake repealing those sections which you feel are preempted as I concur with your analysis and do not want to unnecessarily expose Oldmans to potential claims.

Your consideration is appreciated.

Very truly yours,

\s\ John G. Hoffman

John G. Hoffman

JGH:sdp

cc Ms. V. Susan Miller, Clerk (via email)

C:\Users\JOHN HOFFMAN\Documents\Clients\Oldmans Township\2009\Letter to John Paff re ord repeal 091509.wpd

ORDINANCE NO. 2009-__07

AN ORDINANCE REPEALING CERTAIN VIOLATIONS WHICH ARE PREEMPTED BY
THE NEW JERSEY CRIMINAL CODE

WHEREAS, Oldmans Township has Ordinances regulating certain acts within the
Township which are preempted by the New Jersey Criminal Code;

WHEREAS, Oldmans Township deems it prudent to repeal same;

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township
of Oldmans, County of Salem and State of New Jersey that the following Ordinances are
repealed:

§125-2 Slingshots and similar weapons prohibited

§125-3 Throwing and shooting objects prohibited

§125-4 Carrying dangerous weapons

§125-5 Obscene literature

§125-10 Interference with Fire Department

§125-11 Damaging fire equipment

§125-12 Damaging fire hydrants

§125-13 Interference with peace officers

§125-17 Gaming houses

§125-18 Gambling

§125-19 Gambling devices

§125-20 Attending gaming house

§125-21 Loitering; offensive speech.

This Ordinance shall take effect following final passage and publication as provided by
law.

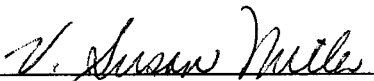
If the provisions of any section, subsection, paragraph, subdivision, or clause of this
ordinance shall be judged invalid by a court of competent jurisdiction, such order of judgment

shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this ordinance.

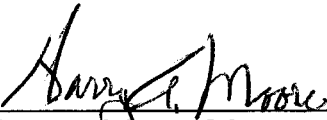
All Ordinances or parts thereof, which are inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of such inconsistency.

ATTEST:

OLDMANS TOWNSHIP



V. Susan Miller, Clerk



Harry A. Moore, Mayor

OLDMANS TOWNSHIP
RESOLUTION 2009-96

WHEREAS, an Ordinance entitled "AN ORDINANCE REPEALING CERTAIN VIOLATIONS WHICH ARE PREEMPTED BY THE NEW JERSEY CRIMINAL CODE" was introduced and passed on first reading on Wednesday, October 7, 2009; and

WHEREAS, public hearing has been held hereon;

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Oldmans, County of Salem and State of New Jersey that an ordinance entitled "AN ORDINANCE REPEALING CERTAIN VIOLATIONS WHICH ARE PREEMPTED BY THE NEW JERSEY CRIMINAL CODE" BE FINALLY ADOPTED AND THAT SAID NOTICE OF ITS ADOPTION, BY TITLE ONLY, BE PUBLISHED IN Today's Sunbeam in accordance with law.

ATTEST:

V. Susan Miller
V. Susan Miller, Clerk

OLDMANS TOWNSHIP

Harry A. Moore
Harry A. Moore, Mayor

Roll call vote: Moore- *yes*
Miller- *yes*
Bradford- *yes*

Adopted: November 4, 2009

