



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

January 19, 2009

Hon. William Miller, Mayor, and
Members of the Township Committee
1180 Route 40
Pilesgrove, NJ 08098

Via email only to MAbdill@PilesgroveNJ.org

Dear Mayor Miller, Deputy Mayor Kille and Committeewoman Reardon:

I write, both individually and in my capacity as Chairman of the New Jersey Libertarian Party's Preempted Ordinance Repeal Project. I ask that you a) request Township Solicitor Mulligan to render an opinion on the validity of each section within Chapter 97 (Disorderly Conduct) of the Township Code, and b) pass a repeal ordinance consistent with Solicitor Mulligan's recommendations.

I have attached a copy of Chapter 97 for your ready reference. I won't go through each section—rather I'll mention just some representative samples:

- The loitering prohibition at § 97-4 is 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 Pilesgrove, may locally prohibit loitering after the Legislature has decided to decriminalize it. Id. at 251.
- § 97-10 (interfering with police) is invalid because the Legislature has passed comprehensive legislation (2C:29-1. “Obstructing administration of law or other governmental function”) 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).
- § 97-14 (Other improper conduct) is unconstitutional because it is so vague as to not set any real standard of conduct.

- Beyond these legal arguments, some provisions are antiquated and not relevant to society as it exists in 2009. For example, § 97-1 seeks to punish people for keeping a “disorderly house or house of ill fame or to be frequented or resorted to by riotous or disorderly persons, prostitutes, gamblers or vagrants.”

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 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 Pilesgrove Township Committee will be bold and upfront enough to ask the municipal attorney to render a legal opinion on the validity of these ordinances.

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 above the name.

John Paff

P.S. To see the changes that other municipalities around New Jersey have made in response to similar letters, see <http://www.lpcnj.org/OGTF/Loiter.html>

Township of Pilesgrove Code Chapter 97 – Disorderly Conduct

§ 97-1 Irreputable houses.

No person shall keep or maintain a disorderly house or a house of ill fame or allow or permit any house, shop, store or other building owned or occupied by him or her to be used as a disorderly house or house of ill fame or to be frequented or resorted to by riotous or disorderly persons, prostitutes, gamblers or vagrants.

§ 97-2 Gambling devices and games of chance.

No person shall set up, keep or maintain or permit to be set up, kept or maintained in any house or premises any faro table, faro bank, roulette wheel or other device or game of chance for the purpose of gaming or any boxing ring, cockpit or other place for men or animals to fight, nor shall any person hold or permit to be held in any house or premises any dogfight, cockfight or any sparring contest for a purse or money prize.

§ 97-3 Gaming.

No person shall deal, play or engage in faro, roulette or other games of chance, either as banker, player, dealer or otherwise for the purpose of gaming.

§ 97-4 Loitering; offensive speech; interfering with passersby.

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.

§ 97-5 Begging or gathering of alms.

No person shall go about from door to door or place himself or herself in the streets or highways to beg or gather alms.

§ 97-6 Indecency; immorality; lewdness.

No person shall appear in any street, highway or public place in a state of nudity or in a dress not belonging to his or her sex or in an indecent or lewd dress; or shall make any indecent exposure of his or her person or be guilty of any lewd or indecent act or behavior; or shall exhibit, sell or offer to sell any indecent or lewd book, picture or thing; or shall exhibit or perform any indecent, immoral or lewd play or other representation.

§ 97-7 Destruction of property.

No person shall, within the limits of said township, maliciously destroy, damage or injure any property.

§ 97-8 Concealed weapons.

No person shall, within the limits of said township, and without lawful authority, have concealed upon his or her person any offensive or dangerous weapon.

§ 97-9 Intoxicated persons.

No person shall, within the limits of said township, be intoxicated or drunk and disorderly in any street, highway, thoroughfare or public place or in any private house or in any hotel, boardinghouse, store, restaurant or other quasi-public place to the annoyance of any person.

§ 97-10 Interfering with or failing to assist township officers.

No person shall, within the limits of said township, hinder or obstruct any officer in the performance of his duties, nor shall any person willfully refuse or neglect to assist any officer, when lawfully called upon by him so to do, 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, either with or without a warrant.

§ 97-11 Conduct during fire emergencies.

No person shall, within the limits of said township, 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 from going to or returning from the place where any 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 and ladder truck, hose cart or any fire apparatus in going to or from the place from which an alarm of fire proceeds or where any building or other property may be burning.

§ 97-12 Disturbance of the peace.

No person shall engage in or attempt or offer to engage in or aid, abet or participate in any fight, assault, quarrel, brawl, battery, altercation, disturbance, riot or unruly, boisterous, noisy, unlawful or disorderly assemblage, nor shall any person in any way breach or disturb the peace.

§ 97-13 Injuring or tampering with streetlights, poles and appurtenances.

No person shall in any way injure, destroy, break, mutilate, deface or tamper with any streetlight, pole of fixture or any part thereof in any street, highway, park or other public place within the limits of said township.

§ 97-14 Other improper conduct.

Other riotous conduct, indecent conduct, breach of the peace, vagrancy and prostitution not hereinbefore mentioned are hereby prohibited within the limits of said township.

§ 97-15 Trespassing.

No person shall hide or be found in or near any dwelling house, warehouse, stable, barn, garage, schoolhouse or any place of public resort or assemblage for business, worship, amusement or other lawful purpose with an intent to steal any goods or chattels or who is unable to give a good account of himself or is there for any other unlawful purpose.

§ 97-16 Unnecessary noise.

No person shall make or continue to cause to be made any unnecessary noise which shall disturb the comfort, rest or repose of any person or persons being in his, her or their place of abode, except noise created pursuant to agricultural purposes.

§ 97-17 Barking dogs.

If any dog or bitch, being confined in any house, building or outhouse or other place shall annoy and/or disturb any person or family residing in the neighborhood by howling and/or barking, the person owning, harboring or confining said dog or bitch shall be deemed a disorderly person.
Editor's Note: See also Ch. 56, Animals, § 56-23.

§ 97-18 Throwing of missiles.

No person shall throw or cause to be thrown any stone, brick or other missile at any person or person's vehicle or residence or at any domestic animal on any street or road in this township.

§ 97-19 Indecent markings.

No person shall write, mark, draw or cut or cause to be written any indecent or obscene words, figures or pictures upon any house, building, wall, fence or other place along any of the streets or elsewhere in the township.

§ 97-20 Indecent acts; nuisances.

No person shall violate decency by an improper exposure of the person or by commission of any nuisance on the streets, public places or on or about the residence or place of business of any person.

§ 97-21 Fireworks.

It is unlawful for any person to sell, give away or dispose of on any public highway, public or private property any fireworks, cherry bombs or other exploders of a like nature.

§ 97-22 Disposition of fines.

All fines imposed and collected under and by virtue of this chapter shall be paid into the treasury of said township.

§ 97-23 Violations and penalties.

Each and every person violating any of the provisions of this chapter shall, upon conviction thereof, forfeit and pay a fine of not more than \$200 or be imprisoned in the County Jail for not more than 90 days; and the Magistrate before whom any such person may be brought may impose such punishment by fine or imprisonment in the County Jail as he may see fit, not exceeding the maximum herein fixed.

§ 97-24 Curfew.

A. Definitions. As used in this section, the following terms shall have the meanings indicated:

GUARDIAN

A person, other than a parent, to whom legal custody of the juvenile has been given by court order or who is acting in the place of the parent or is responsible for the care and welfare of the juvenile.

JUVENILE

An individual who is of the age of 16 years or younger.

PUBLIC PLACE

Any place to which the public has access, including, but not limited to, a public street, road, thoroughfare, sidewalk, bridge, alley, plaza, park, recreation or shopping areas, public transportation, parking lot or any other public building, structure or area.

B. Curfew established. It shall be unlawful for a juvenile of the age of 16 years or younger to be on any public street or in a public place between the hours of 11:00 p.m. and 6:00 a.m. unless accompanied by the juvenile's parent or guardian or unless engaged in or traveling to and from a business or occupation which the laws of this state authorize a juvenile to perform, except as may be permitted by Subsection C herein.

C. Exceptions. Subject to Subsection B, juveniles shall be exempted from the curfew restriction if the juvenile is involved in the following activities:

- (1) Errands involving medical emergencies.

(2) Attendance at, including travel to and from, extracurricular school activities or activities sponsored by religious or community-based organizations.

(3) Attendance at, including travel to and from, cultural, educational and social events after 11:00 p.m. and before 6:00 a.m. for which the juvenile has in his or her possession the written approval of his or her parent or guardian to attend such specific event, with such parent's or guardian's signature.

D. Notice of violation. Under charging a juvenile with violation of this section, notice of the same shall be given in writing by the Police Department to the juvenile's parent or guardian. If, at any time within 30 days following the giving of notice as provided herein, the minor to whom such notice related or applied is again charged, and upon such charge is subsequently convicted of a violation of the curfew provisions of this section, it shall be rebuttably presumed that the juvenile committed such subsequent violation with the knowledge, allowance, permission or sufferance of the parent or guardian of such juvenile and the parent or guardian shall thereupon be charged with a violation of this section.

E. Violations and penalties. Any person found in violation of this section shall be required to perform community service and may be subject to a fine not exceeding \$1,000. If both a juvenile and the juvenile's parent or guardian violate such a section, they shall be required to perform community service together.

F. Construal of provisions. This section shall be liberally construed to effectuate the purpose and interest of P.L. 1992, c. 132.

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)