

BOROUGH OF WANAQUE
COUNTY OF PASSAIC
STATE OF NEW JERSEY

ORDINANCE #1-0-10

AN ORDINANCE REPEALING AND REVISING CERTAIN PROVISIONS OF
CHAPTER
85 ENTITLED "PEACE AND GOOD ORDER" OF THE CODE
OF THE BOROUGH OF WANAQUE

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE BOROUGH
OF WANAQUE, COUNTY OF PASSAIC, STATE OF NEW JERSEY AS FOLLOWS:

1. Chapter 85, Paragraphs 85-1 through 4 are hereby repealed.
2. Chapter 85, Paragraph 7, a,b,c, and 9 are hereby repealed.
3. Chapter 85, paragraphs 5,6,10,11 are saved from repeal and shall remain in force and effect.
4. Chapter 85, Paragraph 8 is hereby revised to provide that no person shall use any vehicle on abandoned, deserted or condemned building as a place of habitation or abode nor shall any person sleep on any public street or property.
5. If any section, subsection, paragraph or sentence or any part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not effect, impair or invalidate the remainder of this ordinance.
6. All ordinances or parts of ordinances which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.
7. This ordinance shall take effect after final passage and publication as required by law.

Dated: January 11, 2010

Katherine J. Falone, RMC, CMC
Municipal Clerk

BOROUGH OF WANAQUE
COUNTY OF PASSAIC
STATE OF NEW JERSEY

ORDINANCE #1-0-10

NOTICE IS HEREBY GIVEN that the foregoing Ordinance was Introduced at a Regular Meeting of the Mayor and Council of the Borough of Wanaque, Passaic County, New Jersey, held on the 11th day of January 2010, and passed on first reading, and the same was then ordered to be published according to law; and that such Ordinance will be further considered for final passage at a meeting of said Mayor and Council to be held in the Municipal Building, 579 Ringwood Avenue, Wanaque, New Jersey, at 8:00 P.M., at which time and place or at any time and place to which said meeting shall be from time to time adjourned, all persons interested will be given an opportunity to be heard concerning said Ordinance.

BY ORDER OF THE MAYOR AND COUNCIL OF THE BOROUGH OF
WANAQUE.

DATED: January 11, 2010

KATHERINE J. FALONE, RMC, CMC
Municipal Clerk

BOROUGH OF WANAQUE
COUNTY OF PASSAIC
STATE OF NEW JERSEY

ORDINANCE #1-0-10

BE IT RESOLVED that an Ordinance entitled:

AN ORDINANCE REPEALING CERTAIN PROVISIONS OF
CHAPTER 85 ENTITLED "PEACE AND GOOD ORDER" OF
THE CODE OF THE BOROUGH OF WANAQUE

pass first reading, and that said Ordinance be further considered for final passage and adoption at a regular meeting of the Borough Council to be held on the 8th day of February 2010, at the Municipal Building in the Borough of Wanaque, at 8:00 P.M., and that at such time and place all persons interested be given an opportunity to be heard concerning said Ordinance.

AND BE IT FURTHER RESOLVED that the Borough Clerk be instructed to publish in the manner provided by law a copy of said Ordinance, together with introduction thereof and notice when same will be considered for final passage and adoption.

Passed: 1/11/10

Filed: 1/11/10

Approved: 1/11/10

KATHERINE J. FALONE, RMC, CMC
Municipal Clerk

BOROUGH OF WANAQUE
COUNTY OF PASSAIC
STATE OF NEW JERSEY

ORDINANCE #1-0-10

BE IT RESOLVED that an Ordinance entitled:

AN ORDINANCE REPEALING AND REVISING CERTAIN
PROVISIONS OF CHAPTER 85 ENTITLED "PEACE AND
GOOD ORDER" OF THE CODE OF THE BOROUGH OF
WANAQUE

pass final reading and that said Ordinance be adopted as an Ordinance of the Borough of
Wanaque; and

BE IT FURTHER RESOLVED that the Borough Clerk be and she is hereby
directed to cause said Ordinance to be published in the manner prescribed by law.

Passed: 2/8/10

Final: 2/8/10

Approved: 2/8/10

Daniel Mahler
Mayor

Attest:

Katherine J. Falone, RMC, CMC
Municipal Clerk

Wanaque Borough Code
Chapter 85

*Interspersed with comments by John Paff, Chairman of the New Jersey Libertarian Party's
Preempted Ordinance Repeal Project.*

Comment: §§ 85-1 through 85-4, dealing with loitering, are already agreed to be in need of repeal.

§ 85-5 Title.

This chapter may be cited as the "Peace and Order Ordinance."

Comment: § 85-5 is not objectionable.

§ 85-6 Time limit for filing of complaint.

No person shall be prosecuted, tried or punished under this chapter unless the complaint therefor shall be filed within one year from the date of the commission or discovery of the offense. This does not apply to any person fleeing from justice.

Comment: § 85-6 is not objectionable.

§ 85-7 Hindering borough officer in performance of his duty.

A. No person shall hinder or obstruct any borough officer in the performance of his duties.

Comment: N.J.S.A. 2C:29-1 (obstructing administration of law or other governmental function) already criminalizes an attempt "to prevent a public servant from lawfully performing an official function." Thus, § 85-7(A) is preempted or at least rendered unnecessary.

B. No person shall knowingly resist or oppose any officer or person authorized by law in serving or attempting to serve any writ, order or process or when such officer is making any arrest, either with or without a warrant.

Comment: In addition to N.J.S.A. 2C:29-1, N.J.S.A. 2C:29-2 (Resisting arrest; eluding officer) already criminalizes preventing or attempting "to prevent a law enforcement officer from effecting an arrest." Thus, § 85-7(B) is preempted or at least rendered unnecessary.

C. No person shall willfully refuse or neglect to assist any borough officer when lawfully called upon by 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 the case of an escape, or when such officer is resisted in the discharge of his duty.

Comment: I find nothing in the law that permits an officer to compel a citizen, under threat of arrest, to assist him or her in suppressing a breach of peace or capturing an escaping suspect. Common sense dictates that private citizens, who are not trained in police work, cannot be compelled to perform police functions.

§ 85-8 Use of certain structures for habitation prohibited; loitering prohibited.

No person shall use any vehicle or abandoned, deserted or condemned building as a place of habitation or abode, nor shall any person lounge, sleep or loiter on any public street or property.

Comment: To the extent that § 85-8 seeks to make it unlawful to “loiter on any public street or property,” it is preempted for that same reasons that is causing the Borough to repeal §§ 85-1 through 85-4, dealing with loitering.

§ 85-9 Damaging streetlights prohibited.

No person shall extinguish or cause damage to the bulbs or other parts of any streetlight or fire alarm indicator light, nor throw, propel or cause to be thrown or propelled, missiles of any kind at any light or parts thereof.

Comment: To the extent that § 85-9 seeks to prohibit damaging street lights, it is preempted or at least rendered unnecessary by N.J.S.A. 2C:17-3 (criminal mischief).

§ 85-10 Permit required for firearms; explosives and fireworks.

A. No person shall within the Borough of Wanaque discharge any firearm, missile, explosive, fireworks, bomb, rocket or aerial display without first obtaining written permission to do so from the Mayor and Council, the Chief of Police, or his agent, and the Fire Prevention Bureau of the Wanaque Borough Fire Department.

Comment: I do not believe that § 85-10 is preempted. Indeed regulation of firearm discharges is expressly granted to municipalities by N.J.S.A. 40:48-1.

B. This shall not apply to any police officer while in the performance of his duties, any military, governmental agency or division during the normal course of their prescribed duties or functions, nor shall this apply to any persons who is hunting in accordance with the laws of New Jersey.

C. No person, other than a police officer, military agent or government agent empowered to carry weapons, shall at any time carry an uncased weapon of any type on any public street or roadway within the Borough of Wanaque.

Comment: 85-10(c) is preempted or at least rendered unnecessary by N.J.S.A. 2C:39-5 (unlawful possession of weapons).

§ 85-11 Registry books required for certain public lodgings.

All owners, lessors or keepers of any hotel, motel, boardinghouse or tourist home shall keep a book of registry in which shall be entered the names and addresses of any and all persons using any room or rooms, together with the number thereof, and the date upon which room or rooms were hired or rented, and said registry shall be in the handwriting of the person or persons renting such room or rooms. Said registry book shall be available for inspection by the Mayor and Council during business hours and shall be available to any police officer at any time for any police investigation.

Comment: § 85-11 is not objectionable.