

**TOWN OF WEST NEW YORK
COUNTY OF HUDSON**

ORDINANCE NO. 04/10

**An Ordinance Repealing Chapter 245 of the Code of the Town of West New York entitled:
Loitering**

Whereas, loitering prohibitions except in a few narrow cases are invalid under New Jersey State Law, see State v. Crawley, 90 N.J. 241 (1982); and

Whereas, the ills sought to be avoided by the language of Chapter 245 of the Code of the Town of West New York entitled: “Loitering” are effectively dealt with by other statutes or ordinances of the Town; and

Whereas, for the foregoing reasons the Board of Commissioners is of the opinion that the repeal of Chapter 245 of the Code of the Town of West New York entitled: “Loitering” will aid in the efficiency of law enforcement activities in the Town by eliminating any unnecessary confusion engendered by the continued inclusion of Chapter 245 in the Code of the Town of West New York;

NOW THEREFORE BE IT ORDAINED by the Mayor and Board of Commissioners of the Town of West New York, County of Hudson, as follows:

Section 1. Chapter 245 of the Code of the Town of West New York entitled: “Loitering” is hereby repealed.

Section 2. All ordinances and parts of ordinances which are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

Section 3. 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 4. This ordinance shall take effect immediately upon final passage, approval, and publication as required by law.

Introduced: 3/17/10

Adopted: 4/21/10



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

February 16, 2010

Hon. Silverio A. Vega, Mayor and Members of the
West New York Town Council
428 - 60th Street
West New York, NJ 07093

(via e-mail only to criccie@westnewyorknj.org)

Dear Mayor Vega and Council members:

I write, both individually and in my capacity as Chairman of the New Jersey Libertarian Party's Preempted Ordinance Repeal Project, seeking review and repeal of Chapter 245 (Loitering) of the Town Code.

Attached are five (5) pages of exhibits:

- A public notice showing that the Town of Guttenberg repealed its loitering code on January 25, 2010. (Exhibit page 1)
- Guttenberg's loitering code, as it existed prior to its repeal. (Exhibit pages 2 & 3)
- West New York's present loitering code. (Exhibit pages 4 & 5)

Loitering prohibitions 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 West New York, is allowed to locally prohibit loitering or vagrancy when the Legislature has decided to decriminalize them. Id. at 251.

When we presented a similar argument to Guttenberg's Mayor and Council, they responded by consulting their attorney and repealing their loitering provision. If you compare Guttenberg's and West New York's loitering provisions, you will find that even though they are not identical, they are substantially similar. Given that Guttenberg opted

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.)

to repeal its loitering ordinance, it would seem to be prudent for West New York' Mayor and Council to at the very least review Chapter 245 .

Would you please direct your Town Attorney to review Chapter 245 and render an opinion on its validity?

Thank you for your attention to this matter. We look forward to hearing from you.

Sincerely,

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

John Paff

**TOWN OF GUTTENBERG
ADOPTION OF ORDINANCE
Public Notice Published 02/12/10**

The foregoing ordinance/ordinances was/were introduced at a Regular Meeting of the Governing Body of the Town of Guttenberg held on January 4, 2010 and was/were read for the first time. This ordinance was / were read for a second time and was voted upon and adopted on a Regular meeting held on January 25, 2010. A copy of this ordinance is posted on the bulletin board in the Municipal Building.

ORDINANCE #001-10 RESCINDING CHAPTER 3 SECTION 2 LOITERING OF THE GENERAL ORDINANCES OF THE TOWN OF GUTTENBERG, COUNTY OF HUDSON, STATE OF NEW JERSEY

ORDINANCE #002-10 RESCINDING CHAPTER 3 SECTION 16 DISORDERLY PERSONS OFFENSE OF THE GENERAL ORDINANCES OF THE TOWN OF GUTTENBERG, COUNTY OF HUDSON, STATE OF NEW JERSEY

This Ordinance shall take effect immediately upon final adoption and publication according to law.

ALBERTO CABRERA
ACTING TOWN CLERK

POLICE REGULATIONS

3-2

3-1.3 Penalty. Any person who shall violate any of the provisions of this section shall, upon conviction, be liable to the penalty stated in Chapter I, Section 1-5, and each violation of this section, and each day the same is violated shall be deemed and taken to be a separate and distinct offense. (Ord. 12/4/50 §6)

3-2 LOITERING.

3-2.1 Loitering Prohibited. 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 likely to cause any of the conditions enumerated in this subsection, he shall, 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 a Police Officer shall be guilty of a violation of this subsection.

No person shall loiter in a public place in such manner as to:

- a. Clearly cause an immediate, actual, physical violent reaction from a reasonable person, which violent reaction will cause a threat to the peace and order of the public.
- b. Obstruct the free passage of pedestrians or vehicles.
- c. Obstruct, molest, or interfere with any person lawfully in any public place as defined in subsection 3-2.1.
- d. Cause excessive noise or disorder so as to interfere with the sleep or peace and quiet of any person or neighborhood.

(Ord. 3/19/73 §2)

3-2.2 Unsolicited Remarks. No person shall make unsolicited remarks of an offensive, disgusting or insulting nature which will so disturb another reasonable person as to

3-2 TOWN OF GUTTENBERG CODE

cause such person to react immediately in such a way as to threaten by physical violence the peace and order of the public. (Ord. 3/19/73 §3)

3-2.3 Minors. Whenever any minor under the age of eighteen (18) is charged with a violation of this section, the Chief of Police shall notify the parent, guardian or other person having custody of such minor of such charge. (Ord. 3/19/73 §4)

3-2.4 Penalty. Any person or persons violating any of the provisions of this section, shall upon conviction, be liable to the penalty stated in Chapter I, Section 1-5. (Ord. 3/19/75 §5)

3-3 CONSUMPTION AND POSSESSION OF ALCOHOLIC BEVERAGES ON PUBLIC PROPERTY OR IN PUBLIC PLACES.

3-3.1 Consumption of Alcoholic Beverages. No person shall serve, sell, dispense, drink or consume any alcoholic beverage on a public street of this Town or upon any public grounds, parks, sidewalks or in any automobile or other vehicle or any other means of transportation while on the public streets, public grounds, parks or sidewalks. (New)

3-3.2 Possession of Open Containers. No person shall possess any open bottle, can or container which contains alcoholic beverages on any public street of this Town or upon any public grounds, parks, sideways or in any automobile or other vehicle or any other means of transportation while on the public streets, public grounds, parks or sidewalks. (New)

3-3.3 Penalty. Any person violating this section shall, upon conviction, be liable to the penalty stated in Chapter I, Section 1-5. (Ord. 11/17/86 §1)

**Town of West New York
Code Chapter 245 regarding Loitering**

§ 245-1 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

LOITERING

Remaining idle in essentially one location, and shall include the concept of spending time idly, loafing or walking about aimlessly or consuming an alcoholic beverage in a public place and shall also include the colloquial expression "hanging around." Standing or speaking in a reasonable, orderly, lawful manner shall not be included in the "loitering" hereafter dealt with.

PUBLIC PLACE

Any place open to common public use or access by persons, including but not limited to any street, sidewalk, highway, road or alley; or a hallway, lobby, roof, basement or office of a public building; or a hallway, stairway, roof, basement or vacant apartment of a public housing residential project. It shall also include the front or the vicinity of any such public place or of any store, shop, restaurant, tavern or other place of business and parking lots used in connection with business establishments and public grounds, areas, parks, lots or other vacant private property not owned by or under the control of the person charged with violating this chapter.

§ 245-2 Failure to comply with order of police officer; certain types of loitering prohibited.

A. 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 likely to cause any of the conditions enumerated in this section, he shall, 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 a police officer shall be guilty of a violation of this section.

B. No person shall loiter in a public place in such manner as to:

(1) Clearly cause an immediate, actual, physical, violent reaction from a reasonable person, which violent reaction will cause a threat to the peace and order of the public.

- (2) Obstruct the free passage of pedestrians or vehicles.
- (3) Obstruct, molest or interfere with any person lawfully in any public place as defined in § 245-1.
- (4) Cause excessive noise or disorder so as to interfere with the sleep or peace and quiet of any person or neighborhood.
- (5) Remain idle in essentially one location within 1,000 feet of an elementary or secondary school during normal school hours, unless such person is a registered student of the said school, a parent of said student, teacher, faculty member or public official or police officer in the school that is located within the said 1,000 feet. For purposes of this subsection, if a police officer orders a person to leave this location, pursuant to Subsection A of this section, and that person returns to the immediate vicinity that they were warned to leave within a seven-hour period from the time that they are warned to leave by the police officer, they shall be guilty of a violation of this chapter. The exclusion in the definition section which allows standing or speaking in a reasonable orderly, lawful manner as not being included in the term of loitering dealt with in this chapter shall not apply to this Subsection B(5), given the limited scope of this subsection and the issues of public safety and welfare that are being addressed by this subsection.

§ 245-3 Offensive remarks.

No person shall make unsolicited remarks of an offensive, disgusting or insulting nature or which are calculated to annoy or disturb the person to whom, or in whose hearing, they are made.

§ 245-4 Parent or guardian to be notified of violation by minor.

Whenever any minor under the age of 18 is charged with a violation of this chapter, the Chief of Police shall notify the parent, guardian or other person having custody of such minor of such charge.

§ 245-5 Violations and penalties.

Any person or persons violating any of the provisions of this chapter shall, upon conviction thereof, be punished as provided in Chapter 1, General Provisions, Article I.