



# New Jersey Libertarian Party

Preempted Ordinance Repeal Project

*John Paff, Chairman*

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July 9, 2008

Hon. Richard Pfeffer, Mayor and Members of Council

Borough of Woodstown

25 West Avenue – Box 286

Woodstown , NJ 08098-0286

*(via email to [woodstownclerk@comcast.net](mailto:woodstownclerk@comcast.net))*

Dear Mayor Pfeffer 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 69 (Loitering), § 52-2, and § 52-3 (Disorderly Conduct) of the Woodstown Borough Code.

Attached please find:

- The Woodstown Code provisions mentioned above (Pages 1 to 4)
- Loitering ordinance of Butler Borough in Morris County (Pages 5 to 8)
- Notice of Repeal of Butler's loitering ordinance (Pages 9 to 10).

If you compare Woodstown's and Butler's loitering ordinances, you will find that even though they are not identical, they are substantially similar. Given that Butler has opted to repeal its loitering ordinance, it would seem to be prudent for the Woodstown Mayor and Council to ask its attorney to review Chapter 69 and report on its validity.

The Borough of Elmer, which is also in Salem County, recently repealed its loitering ordinance at our request. The documents relevant to Elmer's repeal, as well as repeals in nine other New Jersey municipalities, are available on our website at <http://www.lpcnj.org/OGTF/Loiter.html>

Woodstown Code § 52-2 prohibits hindering and obstructing police officers. I question the validity of this provision because the Legislature appears to have intended to comprehensively and exclusively address the problem of interfering with police and other government officials through enactment of N.J.S.A. 2C:29-1 et seq. Accordingly, I question whether it is permissible for Woodstown (or any other municipality) to seek to govern the same type of conduct at the local level.

I invite your attention to State v. Paserchia, 356 N.J. Super. 461, (App.Div.2003). While this case deals with another part of the New Jersey Criminal Code, specifically N.J.S.A. 2C:33, it can also be read to stand for the general proposition that any criminal activity that is dealt with comprehensively by state law is not a proper subject for a municipal ordinance.

Also, I wish to point out that the statute and Woodstown's ordinance requires proof of different levels of culpability to sustain a conviction. For example, N.J.S.A. 2C:29-2 states, in part:

Except as provided in paragraph (3), a person is guilty of a disorderly persons offense if he **purposely** prevents or attempts to prevent a law enforcement officer from effecting an arrest. (2) Except as provided in paragraph (3), a person is guilty of a crime of the fourth degree if he, by flight, **purposely** prevents or attempts to prevent a law enforcement officer from effecting an arrest. (3) An offense under paragraph (1) or (2) of subsection a. is a crime of the third degree if the person . . . (Emphasis supplied).

But, Woodstown Code § 52-2(D) makes it a violation for the actor to "**knowingly** resist or oppose any officer lawfully serving or attempting to serve any writ, bill, order or process. (Emphasis supplied).

"Purposely" is a more stringent standard of culpability than "knowingly." See, N.J.S.A. 2C:2-2. In State v. Felder, 329 N.J. Super. 471, 475 (App. Div. 2000) the Appellate Division found that an inconsistency between the culpability standards defined by a statute and an ordinance, "only underscores the point that the Code and the local ordinance deal with the same criminal conduct in a different manner, and consequently the ordinance is preempted." Thus the "purposely" v. "knowingly" inconsistency supports a conclusion that Woodstown's ordinance is invalid.

Finally, Woodstown Code § 52-2(C) makes it unlawful for a person to "refuse or neglect to assist any police officer when lawfully called upon to do so . . ." Taken literally, this means that if a police officer tells a citizen "Hey you, come here and help me chase down this bank robber," the citizen is in violation of the ordinance if he refuses. Such a result contradicts N.J.S.A. 2C:29-1, which states, in part, that the statute "does not apply to failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions." In other words, the statute appears to decriminalize that which the ordinance seeks to make unlawful.

Woodstown Code § 52-3 makes it unlawful for a person to "cause or create a public nuisance on any" street or highway within the Borough. While it is not completely clear, this appears to be an attempt to regulate "street conduct" and should be invalidated for the reasons expressed in State v. Paserchia.

Would you please ask Mr. Rosenberger to review these ordinances and render an opinion on their validity? I look forward to hearing from you.

Sincerely,

John Paff

cc. George G. Rosenberger, Jr., Esq. (*via email only to [ggrlaw@comcast.net](mailto:ggrlaw@comcast.net)*)  
w/ all enclosures

§ 69-1

LOITERING

§ 69-1

## Chapter 69

## LOITERING

§ 69-1. Definitions.

§ 69-2. Certain types of loitering prohibited.

§ 69-3. Discretion of police officer.

§ 69-4. Violations and penalties.

[HISTORY: Adopted by the Mayor and Council of the Borough of Woodstown 6-23-75 as Ord. No. 276. Amendments noted where applicable.]

## GENERAL REFERENCES

Alcoholic beverages — See Ch. 35.

Curfew — See Ch. 49.

Dances and dance halls — See Ch. 51.

Be it ordained by the Mayor and Council of the Borough of Woodstown, in the County of Salem and State of New Jersey:

§ 69-1. Definitions.

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

**LOITERING** — Remaining idle in essentially one (1) location, including the concepts of spending time idly, loafing or walking about aimlessly, and also including the colloquial expression "hanging around."

**PARENT or GUARDIAN** — Any adult person having the care or custody of a minor, whether by reason of blood relationship, the order of any court or otherwise.

**PUBLIC PLACE** — Any place to which the public has access, including any street, highway, road, alley or sidewalk. It shall also include the front or the neighborhood of any store, shop, restaurant, tavern or other

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## § 69-1

## WOODSTOWN CODE

## § 69-4

place of business, and public grounds, areas and parks, as well as parking lots or other vacant private property not owned by or under the control of the person charged with violating this chapter, or, in the case of a minor, not owned by or under the control of his parent or guardian.

**§ 69-2. Certain types of loitering prohibited.**

No person shall loiter in a public place either while under the influence of alcohol or in such 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 any public place as defined in § 69-1. This subsection 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.

**§ 69-3. 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 § 69-2, he may, 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.

**§ 69-4. Violations and penalties.**

Any person violating the provisions of this chapter shall be punished by the imposition of a fine not exceeding five hundred dollars (\$500.) for each offense or violation or by imprisonment not exceeding ninety (90) days in the county jail, or both.

§ 52-1

**DISORDERLY CONDUCT**

§ 52-1

**Chapter 52****DISORDERLY CONDUCT****§ 52-1. Weapons.****§ 52-2. Interference with police officers.****§ 52-3. Creating a nuisance while on the highway.****§ 52-4. Excessive noise.**

**[HISTORY: Adopted by the Mayor and Council of the Borough of Woodstown 4-25-77 as Ord. No. 290; amended in its entirety 8-24-81 by Ord. No. 328. Subsequent amendments noted where applicable.]**

**GENERAL REFERENCES****Board of Health — See Ch. 14.****Police Department — See Ch. 21.**

Be it ordained by the Mayor and Council of the Borough of Woodstown, in the County of Salem and State of New Jersey:

**§ 52-1. Weapons. [Amended 9-12-95 by Ord. No. 495]**

No person shall within the limits of the Borough of Woodstown, carry about their person or in any vehicle under their control any destructive device or other weapon as detailed in N.J.S.A. 2C:39-1, et seq. Persons convicted under this section shall be subject to a fine not exceeding five hundred dollars (\$500.) and to imprisonment in the county jail for a period not exceeding ninety (90) days.

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8-11-04



§ 155-1

LOITERING

§ 155-1

## Chapter 155

## LOITERING

- § 155-1. Definitions.
- § 155-2. Certain types of loitering prohibited.
- § 155-3. Authority of police officer.
- § 155-4. Parental knowledge.
- § 155-5. Notification of violation.
- § 155-6. Presumption.
- § 155-7. Violations and penalties.

[HISTORY: Adopted by the Mayor and Council of the Borough of Butler as Section 3-1 of the Revised General Ordinances of 1976. Section 155-7 amended at time of adoption of Code; see Ch. 1, General Provisions, Art. II. Other amendments noted where applicable.]

## GENERAL REFERENCES

Alcoholic beverages — See Ch. 67.  
Noise — See Ch. 100.  
Parks and recreation areas — See Ch. 168.

## § 155-1. Definitions.

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

LOITERING — Remaining idle in essentially one (1) location, and shall include the concepts of spending time idly, loafing or walking about aimlessly, and shall include also the colloquial expression "hanging around."

15501

§ 155-1

## BUTLER CODE

§ 155-3

**PARENT or GUARDIAN** — Shall include any adult person having care or custody of a minor, whether by reason of blood relationship, the order of any court or otherwise.

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

**§ 155-2. Certain types of loitering prohibited.**

No person shall loiter in a public place in such 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 any public place as defined in § 155-1. This subsection 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.

**§ 155-3. Authority 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 § 155-2, he may, if he deems it necessary for the

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## § 155-3

## LOITERING

## § 155-7

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 the provisions of this chapter.

## § 155-4. Parental knowledge.

No parent or guardian of a minor under the age of eighteen (18) years shall knowingly permit that minor to loiter in violation of this chapter.

## § 155-5. Notification of violation.

Whenever any minor under the age of eighteen (18) years of age is charged with a violation of the provisions of this chapter, his parent or guardian shall be notified of this fact by the Chief of Police or any other person designated by him to give such notice.

## § 155-6. Presumption.

If at any time within thirty (30) days following the giving of notice as provided in § 155-5, the minor to whom such notice relates again violates the provisions of 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.

§ 155-7. Violations and penalties.<sup>1</sup>

- A. Maximum penalty. For violation of any provision of this chapter, the maximum penalty shall, upon conviction thereof before the borough recorder or other judge authorized to hear and determine the matter, be a fine not exceeding five hundred dollars (\$500.), or imprisonment in the county jail or borough lockup for a period not ex-

<sup>1</sup> Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. II.

§ 155-7

## BUTLER CODE

§ 155-7

ceeding ninety (90) days, or both, in the discretion of the recorder or Municipal Judge.

- B. Separate violations. Except as otherwise provided, each and every day in which a violation of any provision of this chapter exists shall constitute a separate violation.

15504

BOROUGH OF BUTLER ORDINANCE NO. 2008-6  
ORDINANCE REPEALING CHAPTER 155 OF REVISED GENERAL ORDINANCES OF THE  
BOROUGH OF BUTLER

Notice that the above entitled ordinance was finally passed, adopted and approved at a council meeting of the Mayor and Council of the Borough of Butler, New Jersey, held on the twentieth day of May 2008 and becomes effect upon publication, according to law.

Carol M. Ashley  
Borough Clerk  
Suburban Trends-2338361  
Fee:\$7.48  
May 25, 2008

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BOROUGH OF BUTLERORDINANCE NO. 2008-6  
ORDINANCE REPEALING CHAPTER 155 OF THE REVISED GENERAL ORDINANCES OF  
THE BOROUGH OF BUTLER

WHEREAS, Chapter 155 of the Revised General Ordinances of the Borough of Butler entitled "Loitering" prohibits certain activities commonly referred to as "loitering" and;

WHEREAS, Loitering ordinances, like the ordinance contained in Chapter 155 of the Revised General Ordinances of the Borough of Butler, were declared invalid by the New Jersey Supreme Court in State v. Crawley, 90 N.J. 241 (1982) and;

WHEREAS, The Court invalidated municipal loitering ordinances based on the fact that the New Jersey Code of Criminal Justice had contained a prohibition on loitering which was repealed by the State Legislature; and

WHEREAS, This ordinance has not been enforced and was rendered irrelevant by the Court decision.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Butler, County of Morris and State of New Jersey, as follows:

Section 1. Chapter 155 of the Revised General Ordinance of the Borough of Butler, entitled "Loitering" shall be and is hereby repealed in its entirety.

Section 2. If any section or provision of this Ordinance shall be held invalid in any Court of competent jurisdiction, the same shall not affect the other sections or provisions of this Ordinance, except so far as the section or provision so declared invalid shall be inseparable from the remainder or any portion thereof.

Section 3. All Ordinances or parts of Ordinances which are inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 4. This Ordinance shall take effect immediately after final passage and publication in the manner provided by law. Clerks Statement

This ordinance will remove Chapter 155 from the Revised General Ordinances of the Borough of Butler. NOTICE OF INTRODUCTION

NOTICE IS HEREBY GIVEN, that the foregoing Ordinance was submitted in writing at a meeting of the Mayor and Council of the Borough of Butler in the County of Morris and the State of New Jersey held on the fifteenth day of April 2008 introduced and read by title and passed on first reading and that said Governing Body will further consider the same for second reading and final passage thereof at a meeting to be held on the twentieth day of May 2008 at 7:00 o'clock in the evening prevailing time, at the One Ace Road 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 of interest shall have an opportunity to be heard concerning same.

Carol M. Ashley, RMC/CMC/CPM  
Borough Clerk  
Borough of Butler  
Suburban Trends-2311587  
Fee:\$34.60  
April 23, 2008

LAW OFFICE OF  
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February 27, 2009

John Paff  
PO Box 5424  
Somerset, NJ 08875-5424

RE: Woodstown Borough  
Our File: R1866-09

Dear Mr. Paff:

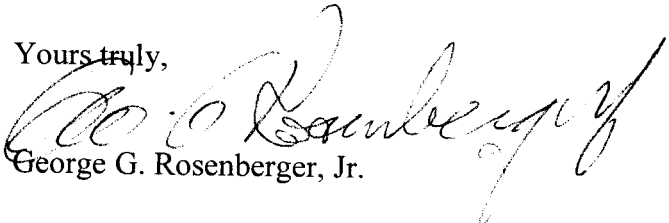
This letter responds to yours of February 13, 2009 addressed to Cynthia Dalessio, clerk for the Borough of Woodstown. I have recommended to the Mayor and Council that Chapter 69 (loitering) and §§ 52-2 and 52-3 (disorderly conduct) be repealed. I anticipate Council will act on this recommendation within the next 30 days.

Your question regarding the certification of available funds was previously discussed with the chief financial officer and municipal auditor. Both were of the opinion that the chief financial officer's signature over the words "No order is valid unless signed by CFO" were sufficient for statutory compliance. Notwithstanding their opinion, I suggested the vouchers be revised to include language consistent with that of the statute. I understand the vouchers are in the process of being revised to include this language.

Although your letter of February 13 focused on the solicitor's payment from February of 2007, I note this payment was authorized using the same voucher system as was utilized for all other professionals and for the purchase of other goods and services. The municipal auditor has never questioned this procedure, and it has never been questioned by anyone at the State level.

Notwithstanding the fact this procedure has been followed thousands of time in the past, I agree it would be a better practice to have clearer language associated with the CFO's signature. Vouchers with certifying language are being acquired, and will be used in the future.

Yours truly,



George G. Rosenberger, Jr.

GGR/dbp

Cc: Mayor and Council

Woodstown/2009 R1866-09 ltr 02

**BOROUGH OF WOODSTOWN**

**ORDINANCE 2009- 7**

**AN ORDINANCE AMENDING CHAPTER 52  
AND REPEALING CHAPTER 69  
OF THE MUNICIPAL CODE FOR  
THE BOROUGH OF WOODSTOWN,  
SALEM COUNTY, NEW JERSEY**

**WHEREAS**, the Borough of Woodstown has determined that §§ 52-2 and 52-3 of Chapter 52 entitled DISORDERLY CONDUCT should be repealed; and

**WHEREAS**, the Borough has further determined that Chapter 69 of the Municipal Code entitled LOITERING should be repealed in its entirety; and

**NOW THEREFORE, BE IT ORDAINED**, on this \_\_\_\_\_ day of \_\_\_\_\_, 2009 by the Mayor and Council for the Borough of Woodstown, Salem County, New Jersey that Chapters 52 and 69 of the Municipal Code be amended as follows:

**§ 52-1. Weapons.** No change

**§ 52-2. Interference with police officers.** Repealed in its entirety.

**§ 52-3. Creating a nuisance while on the highway.** Repealed in its entirety.

**§ 52-4. Excessive Noise.** Renumbered to read § 52-2.

**§ 69-1. Definitions.** Repealed.

**§ 69-2. Certain types of loitering prohibited.** Repealed.

**§ 69-3. Discretion of police officer.** Repealed.

**§ 69-4. Violations and penalties.** Repealed.

**THIS ORDINANCE** shall take effect upon adoption and publication according to law.

BOROUGH OF WOODSTOWN

Date: 03/24/09

  
By: Richard S. Pfeffer, Mayor

ATTEST:

  
Cynthia Dalessio, Clerk