

TOWNSHIP OF EDGEWATER PARK

ORDINANCE NO. 2010-8

**AN ORDINANCE OF THE TOWNSHIP OF EDGEWATER PARK
AMENDING THE CODE OF THE TOWNSHIP OF EDGEWATER
PARK TO REPEAL § 9-04-010**

WHEREAS, it appears that §9-04-010 of the Edgewater Park Township Code covers the same offenses as violations of N.J.S.A. 2C:33-2. The state disorderly persons statute, therefore, pre-empts the municipal ordinance.; and

WHEREAS, it is, therefore, necessary that §9-04-010 establishing such regulations be repealed,

NOW THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Edgewater Park, County of Burlington and State of New Jersey as follows:

Section 1. §9-04-010 of the Edgewater Park Township Code be and hereby is repealed and the provisions thereof shall be deleted from the Edgewater Park Township Code.

Section 2. If a court of competent jurisdiction shall declare any section, paragraph, subsection, clause or provision of this Ordinance invalid, such decision shall not affect the validity of this Ordinance as a whole or any part thereof.

Section 3. All ordinances or parts of ordinances of the Township of Edgewater Park heretofore adopted that are inconsistent with any of the terms and provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

Section 4. This ordinance shall take effect immediately upon adoption. Notice of adoption shall be published as provided by law.

NOTICE

The foregoing was introduced by the Edgewater Park Township Committee at its meeting held on September 7, 2010. This ordinance will be consider for adoption of final reading and public hearing to be held on September 21, 2010 at 7:00 PM, or shortly thereafter, and place to which such meeting may be adjourned, in the Municipal Building, 400 Delanco Road, Edgewater Park, New Jersey. At which time and place all persons interested will be given an opportunity to be heard concerning said Ordinance. During the week prior to and up to and including the date of such meeting, copies of said ordinance will be made available at the Clerk's office to the members of the general public who shall request the same.


 Kevin Johnson, Mayor

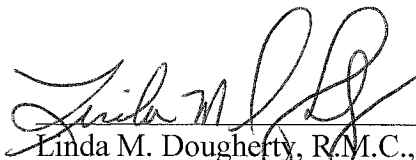

 Tanyika L. Johns
 Deputy Clerk

| Record Vote of the Township Committee | | | | | |
|---------------------------------------|-------------------------------------|----|---------|--------|--------------|
| Committee Member | Yes | No | Abstain | Absent | Motioned By: |
| Mrs. Belgard | <input checked="" type="checkbox"/> | | | | |
| Mr. Booker | <input checked="" type="checkbox"/> | | | | 1st |
| Mayor Johnson | <input checked="" type="checkbox"/> | | | | |
| Mr. McElwee | <input checked="" type="checkbox"/> | | | | 2nd |
| Mr. Pullion | <input checked="" type="checkbox"/> | | | | |

Notice of Final Adoption:

Notice is hereby given that the foregoing ordinance was approved for final adoption by the Township Committee of the Township of Edgewater Park at a Regular Meeting held on 10/5/2010, 2010 at the Municipal Building, 400 Delanco Road.


 Kevin Johnson, Mayor


 Linda M. Dougherty, R.M.C.,
 Municipal Clerk/Administrator

1st Reading: 9/7/10
 Publication: 9/16/10
 Tabled: 9/21/10
 2nd Reading: 10/5/10
 Publication: 10/10/10
 Adoption: 10/15/10

| Record Vote of the Township Committee | | | | | |
|---------------------------------------|-----|----|---------|--------|--------------|
| Committee Member | Yes | No | Abstain | Absent | Motioned By: |
| Mrs. Belgard | X | | | | 2nd |
| Mr. Booker | X | | | | 1st |
| Mayor Johnson | X | | | | |
| Mr. McElwee | X | | | | |
| Mr. Pullion | X | | | | |



New Jersey Libertarian Party

Preempted Ordinance Repeal Project

John Paff, Chairman
(temporary) 2106 S Cypress Bend Dr Apt 102
Pompano Beach, FL 33069-4457
Phone: 954-978-6054 - Fax: 908-325-0129
Email: lpsmc@pobox.com

February 14, 2008

Hon. Judith Hall, Mayor, and
Members of the Edgewater Park Township Committee
984 Tuckerton Rd
Marlton, NJ 08053

(Via email only to ldougherty@edgewaterpark-nj.com)

Dear Mayor Hall and Members of the Township Committee:

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 your Township Attorney to render an opinion on the validity of § 9.04.010 (Disorderly Conduct) of the Township Code and b) introduce an ordinance to repeal those parts that the attorney finds to be invalid.

The ordinance prohibits five types of conduct. All are an invalid exercise of municipal power because the Legislature has already passed comprehensive legislation 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).

For instance, § 9.04.010(E) states that a person commits a violation if he or she "intentionally obstructs vehicular or pedestrian traffic without lawful authority." Yet, N.J.S.A. 2C:33-7, the ordinance's statutory counterpart, states:

Obstructing Highways and Other Public Passages.

a. A person, who, having no legal privilege to do so, purposely or recklessly obstructs any highway or other public passage whether alone or with others, commits a petty disorderly persons offense. "Obstructs" means renders impassable without unreasonable inconvenience or hazard. No person shall be deemed guilty of recklessly obstructing in violation of this subsection solely because of a gathering of persons to hear him speak or otherwise communicate, or solely because of being a member of such a gathering.

b. A person in a gathering commits a petty disorderly persons offense if he refuses to obey a reasonable official request or order to move:

(1) To prevent obstruction of a highway or other public passage; or

(2) To maintain public safety by dispersing those gathered in dangerous proximity to a fire or other hazard.

An order to move, addressed to a person whose speech or other lawful behavior attracts an obstructing audience, shall not be deemed reasonable if the obstruction can be readily remedied by police control of the size or location of the gathering.

As you can see, Edgewater Park's ordinance prohibits an "intentional obstruction" *per se*, while the statute balances "the First Amendment guarantees of speech and assembly against the need for public safety measures under appropriate circumstances." State v. Greenberg, 179 N.J. Super. 565, 570 (Law Div. 1980).¹

If a person were to speak on a sidewalk in Edgewater Park and a group of citizens were to gather around to hear the speech, the speaker and listeners could arguably be arrested under the ordinance. But, under the statute, no one in the gathering could be arrested unless they first refused a police order to move to a different location.

This hypothetical illustrates why having this ordinance on the books is dangerous. First, it invites police officers, who may not be aware of the distinction between the ordinance and the statute, to wrongly arrest people who are lawfully exercising their free speech and assembly rights. Second, if people are wrongly arrested under the ordinance, the Township might be sued civilly for violating their rights.

The conduct prohibited by each of the other parts of the ordinance are also covered by state statute: Subsections A, B and C are covered by N.J.S.A. 2C:33-2 and 4 and subsection D is covered by N.J.S.A. 2C:33-8.

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 local police can use them to harass those who have committed no actual crime, but who, by their very presence, cause other people to feel

¹ Here's a more from the Greenberg decision: ". . . the purpose behind this statute is to prohibit the offense of obstruction while balancing First Amendment guarantees of freedom of speech and assembly against the need for public safety measures under appropriate circumstances. In order to effectuate this balance, the act defines obstruction but provides that a person is not guilty of obstruction merely because a group gathers to hear him speak, or because he is a member of a group gathered to hear another speak. The statute goes on to establish the relative obligations of private citizens and the police in public safety terms, when an obstruction occurs. A person must obey a reasonable order to move to prevent obstruction or maintain public safety if he is a part of a gathering dangerously close to a fire or other similar hazard. At the same time, an order to move directed to a person whose speech attracts an obstructing audience will not be considered reasonable if the obstruction can be remedied in a less restrictive way."

uneasy. Hopefully, the Edgewater Park Mayor and 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

Title 9

PUBLIC PEACE AND WELFARE

Chapters:

- 9.04 Offenses Against Public Peace and Decency
- 9.08 Offenses Against Property
- 9.12 Curfew
- 9.16 Drug-Free School Zones
- 9.20 Weapons

Chapter 9.04

OFFENSES AGAINST PUBLIC PEACE AND DECENCY

Sections:

- 9.04.010 Disorderly conduct.
- 9.04.020 Consumption and possession of intoxicating liquor or malt beverage.

9.04.010 Disorderly conduct.

Any of the following persons shall be deemed guilty of misdemeanor:

- A. Any person who unlawfully fights in a public place or challenges another person in a public place to fight;
- B. Any person who maliciously and wilfully disturbs another person by loud and unreasonable noise;
- C. Any person who uses offensive words in a public place which are inherently likely to provoke an immediate violent reaction;
- D. Any person who intentionally disrupts any lawful assembly or meeting of persons without lawful authority; or
- E. Any person who intentionally obstructs vehicular or pedestrian traffic without lawful authority. (Ord. 6-97 § 2(k); prior code § 12:4-1)

9.04.020 Consumption and possession of intoxicating liquor or malt beverage.

A. Definitions. As used in this section:

“Alcoholic liquor or malt beverage” means any substance whose sale or disposition is regulated by regulations promulgated by the Department of Treasury, Division of Alcoholic Beverage Control, within the state of New Jersey.

“Public property” means any and all property including rights-of-way, roads, buildings, recreational facilities or land located within the township of Edgewater Park, owned by the township of Edgewater Park, or any other governmental agency.

“Quasi-public property” means any private street, highway, lane, alley or other roadway which is open to the public or to which the public is invited, and shall in this context include any and all parking yards, parking lots, causeways, alleys or malls generally open to the public.

- B. Regulations. No person shall, on any public or quasi-public property within the township:
 - 1. Consume any intoxicating liquor or malt beverage;
 - 2. Be in possession of an opened or unsealed container of any alcoholic liquor or malt beverage.

- C. Penalties. Any person who shall violate any of the provisions of this section shall, upon conviction, be punished in accordance with Section 1.08.010 of this code. (Prior code § 12:21-20)