



New Jersey Libertarian Party

P.O. Box 56

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WWW.NJLP.ORG

March 6, 2006

Hon. Joseph A. DiDonato, Mayor, and
Members of the West Milford Township Council
1480 Union Valley Road
West Milford, NJ 07480

RE: Repeal of Ord. § 5.3 (Loitering) and amendment of § 19-12 (Nuisance)

Dear Mayor DiDonato and Members of the Township Council:

For the reasons set forth in the attached report, the New Jersey Libertarian Party concludes that

1. the loitering ordinance is preempted by the New Jersey Criminal Code and ought to be repealed in its entirety, and that
2. § 19-12 needs to be amended to excise §§ 2.1(a) and (b) from the list of prohibited nuisances, since both of those subsections have been declared unconstitutional.

We ask that you please direct your municipal attorney, Fred Semrau, Esq., to review and render his opinion on the conclusions reached in our report. We also ask that you repeal or amend the Township's ordinances, as appropriate, in accordance with Mr. Semrau's findings.

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

Respectfully,

John Paff

cc. New Jersey Libertarian Party Chairman and Steering Committee

REPORT ON WEST MILFORD TOWNSHIP'S LOITERING AND NUISANCE ORDINANCES

by John Paff

INTRODUCTION

The New Jersey Libertarian Party opposes loitering, curfew, vagrancy and similar laws that permit the police to arrest those who have done nothing more than be present on the streets after a certain hour or under certain circumstances.

Our opposition to these laws is grounded in the same reasoning expressed by the United States Supreme Court when it struck down a Jacksonville, Florida ordinance that permitted the arrest of those "strolling about from place to place without any lawful purpose or object." In that case, Papachristou v. City of Jacksonville, 405 U.S. 156 (1972), the Court held:

A presumption that people who might walk or loaf or stroll or frequent houses where liquor is sold, or who are supported by their wives or who look suspicious to the police are to become future criminals is too precarious for a rule of law. The implicit presumption in these generalized vagrancy standards--that crime is being nipped in the bud--is too extravagant to deserve extended treatment. Of course, vagrancy statutes are useful to the police. Of course, they are nets making easy the roundup of so-called undesirables. But the rule of law implies equality and justice in its application. Vagrancy laws of the Jacksonville type teach that the scales of justice are so tipped that even-handed administration of the law is not possible. The rule of law, evenly applied to minorities as well as majorities, to the poor as well as the rich, is the great mucilage that holds a society together.

The New Jersey Libertarian Party also opposes laws that remain on the books even though they have been declared unconstitutional. The presence of such laws on the books invite improper enforcement against innocent parties.

IDENTIFICATION OF EXHIBITS

Attached are the following exhibits:

- A. West Milford's Loitering Ordinance, § 5.3 (2 pages)
- B. West Milford's Nuisance Ordinance, § 19-12 (1 page)
- C. Public Health Nuisance Code of New Jersey (1953), adopted by reference through Ord. § 19-12.2 (2 pages)

- D. Flemington Borough's former Loitering Ordinance (2 pages)
- E. September 23, 2003 letter from then Flemington Borough Attorney Peter A. Buchsbaum concluding that Flemington Borough's Loitering Ordinance "is preempted by the New Jersey Criminal Code." (Mr. Buchsbaum has since been appointed as a Judge of the New Jersey Superior Court.) (2 pages)
- F. Flemington Borough's repeal of its Loitering Ordinance (1 page)
- G. Elmwood Park Borough's former Loitering Ordinance (2 pages)
- H. Elmwood Park Borough's repeal of its Loitering Ordinance (1 page)

LEGAL ARGUMENT

Loitering Ordinance

In State v. Crawley, 90 N.J. 241 (1982) the Supreme Court invalidated Newark's loitering ordinance. The Court found that the Legislature, through adoption of the New Jersey Code of Criminal Justice (Code), N.J.S.A. 2C:1-1 to 65-4, sought "to create a consistent, comprehensive system of criminal law . . . to eliminate inconsistencies, ambiguities, outmoded and conflicting, overlapping and redundant provisions and to revise and codify the law in a logical, clear and concise manner." *Id.* at 250-51. [Emphasis in the Court's opinion]

The Court also found, after reviewing the legislative history and applying the "preemption by exclusion" clause of N.J.S.A. 2C:1-5(d), "that the absence of a loitering proscription from the Code reflects a state policy to decriminalize such activity." *Id.* at 247.

The principles set forth in Crawley were later relied upon to invalidate West Orange's disorderly conduct ordinance. "[A]n examination of Chapter 33 of the Code reveals a policy to comprehensively address street behavior and other conduct in public places which may disturb citizens and disrupt peaceful society." State v. Paserchia, 356 N.J. Super. 461, 466 App. Div. 2003).

In a January 13, 2003 article¹, the New Jersey Law Journal opined that "[u]nder the leading cases the Paserchia court relied on, State v. Crawley, 90 N.J. 241 [1982], and State v. Felder, 329 N.J. Super. 471 [2000], there seems little latitude for municipalities to pass laws in areas where the state has legislated." Indeed, it would appear that all ordinances attempting to regulate "street behavior and other conduct in public places," which is already comprehensively treated by Chapter 33 of Title 2C, are preempted unless there are "unique local concerns requiring an individualized response by the municipality." Paserchia at 467. Since West Milford Township does not appear to have any "unique local concerns" in need of specific, local regulation, the loitering ordinance is preempted by the Code.

West Milford's loitering ordinance is very similar, and in many places identical, to the repealed loitering ordinances in Elmwood Park and Flemington. The fact that both of these

¹ "Yet Another Municipal Ordinance Is Struck Down on Pre-emption Grounds Penchant for enhanced criminalizing of conduct gets a slap on wrist," January 13, 2003, by Mary P. Gallagher.

boroughs repealed their loitering ordinances after having been presented with the arguments set forth here provides further evidence that West Milford's loitering ordinance is invalid. West Milford should also find it persuasive that the attorney who recommended repeal of Flemington's loitering ordinance is now a Judge of the Superior Court.

Nuisance Ordinance

Like many municipalities, West Milford has adopted by reference the Public Nuisance Code of New Jersey (1953). §§ 2.1(a) and 2.1(b) of that Code declare the following acts nuisances:

- a. Any matter, thing condition or act which is or may become detrimental or a menace to the health of the inhabitants of this municipality.
- b. Any matter, thing condition or act which is or may become an annoyance, or interfere with the comfort or general well-being of the inhabitants of this municipality.

Both of these provisions have been declared unconstitutional by the Appellate Division of the New Jersey Superior Court. Guidi v. City of Atlantic City, 286 N.J. Super. 243 (App. Div. 1996) and State v. Golin, 363 N.J. Super. 474 (App. Div. 2003). The Appellate Division found that these provisions "set forth unascertainable standards that encourage arbitrary and discriminatory enforcement [and] left citizens at the mercy of [the provisions'] enforcers." See, e.g. Guidi at 245-46.

CONCLUSION

Ord. § 5.3 (Loitering) ought to be repealed in its entirety. Ord. § 19-12 (Nuisance) ought to be amended to remove at least² the unconstitutional provisions set forth in §§ 2.1(a) and 2.1(b) of the Public Nuisance Code of New Jersey (1953).

² The council ought to consider the wisdom and viability of other provisions of the 1953 Code, such as §§ 2.1(e), which prohibits "the existence or presence of ragweed" anywhere within the Township.

TOWNSHIP OF WEST MILFORD ORDINANCES

5-3 Loitering.

5-3.1 *Definition.* As used in this section:

A. "Loiter" or "loitering" in this section shall mean any standing, standing around, lingering, lounging, sleeping, wandering, and, in the colloquial phrase, hanging around, or, refusal to move away from any public place or quasi-public place when ordered so to do by any police officer of the Township, when such loitering shall be contrary to the public safety, peace, property, welfare and good order of the Township, or of the inhabitants thereof.

B. "Public place" or "quasi-public place" in this section shall mean any street, sidewalk, curb, park, place or property owned by the Township, or by the board of education or where the public is customarily invited, including alleys and business parking areas, lobbies, shelters, and entrance ways.

C. "Parent" or "guardian" shall mean any adult person having care or custody of a minor, whether by reason of blood relationship, the order of any court or otherwise.

5-3.2 *Certain Types of Loitering Prohibited.* No person whether as pedestrians, or as occupants or users of any motor vehicle or motorcycle, scooter or bicycle, shall loiter in a public place in such a 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 a public place. This paragraph shall include the making of 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.

5-3.3 *Violation.* Any person violating the provisions of subsection 5-3.2, who when ordered to move on by a police officer, and fails or refuses to do so shall be guilty of a violation. If any such person shall, after receiving such order, thereafter return to or re-congregate at such public place within three hours of receipt of such order he shall be guilty of a violation of subsection 5-3.2 of this section, whether or not any further order to disperse or move away from the public place or quasi-place shall first be given by any police officer of the Township.

5-3.4 *Loitering by Minors.* It shall be unlawful for the parent, guardian or other adult person having the care or custody of any minor under the age of 18 to knowingly permit such minor to loiter in violation of this action. Whenever any minor under the age of 18 is apprehended for violating this section, the chief of police shall notify the parent, guardian or other person having custody of the minor. If it be established that any minor under the age of 18 loitered in violation of this section between the hours of 9 P.M. and 6 A.M. of the following day, prevailing time, then it shall be presumed in the absence of proof to the contrary, that the parent, guardian or other adult person having the care or custody of such minor knowingly permitted such minor to do so. If it be established that the parent, guardian or other adult person having the care or custody of any minor under the age of 18 was duly notified pursuant to this subsection that the minor had been apprehended

TOWNSHIP OF WEST MILFORD ORDINANCES

for a violation of this section, and if he further established that the minor subsequently violated subsection 5-3.2, of this section, then it shall be presumed, in the absence of proof to the contrary, that any such parent, guardian or adult person knowingly permitted such subsequent violation.

TOWNSHIP OF WEST MILFORD ORDINANCES

19-12 Public Health Nuisance Code.

19-12.1 *Code Established.* A code defining and prohibiting certain matters, things, conditions or acts and each of them as a nuisance, prohibiting certain noises or sounds, requiring the proper heating of apartments, prohibiting lease or rental of certain buildings, prohibiting spitting in or upon public buildings, conveyances or sidewalks, authorizing the inspection of premises by an enforcement official, providing for the removal or abatement of certain nuisances and recovery of expenses incurred by the Health Department in removing or abating such nuisances and prescribing penalties for violations is hereby established pursuant to R.m. 36:3-69 to 69.6. A copy of the code is annexed hereto and made a part hereof without the inclusion of the text herein.

19-12.2 *Title of Code.* The code established and adopted by this section is described and commonly known as the Public Health Nuisance Code of New Jersey (1953).

19-12.3 *Public Record.* Three copies of the Public Health Nuisance Code (1953) have been placed on file in the office of the Township clerk for the use and examination of the public.

IV. Ordinance 19-12.1

BE IT ORDAINED BY THE BOARD OF HEALTH OF
IN THE COUNTY OF
AND STATE OF NEW JERSEY:

PUBLIC HEALTH NUISANCE CODE OF
NEW JERSEY (1953)
APPROVED BY THE NEW JERSEY STATE
DEPARTMENT OF HEALTH, SEPTEMBER 16, 1953

Section 1. A code defining and prohibiting certain matters, things, conditions or acts and each of them as a nuisance, prohibiting certain noises or sounds, requiring the proper heating of apartments, prohibiting lease or rental of certain buildings, prohibiting spitting in or upon public buildings, conveyances or sidewalks, authorizing the inspection of premises by an Enforcing Official, providing for the removal or abatement of certain nuisances and recovery of expenses incurred by the Board of Health in removing or abating such nuisances and prescribing penalties for violations is hereby established pursuant to Chapter 188, Laws of 1950. A copy of said code is annexed hereto and made a part hereof without the inclusion of the text thereof herein.

Section 2. The said code established and adopted by this ordinance is described and commonly known as the "Public Health Nuisance Code of New Jersey (1953)."

Section 3. Three copies of the said "Public Health Nuisance Code of New Jersey (1953)" have been placed on file in the office of the (Health Officer) (secretary) (clerk) (or other similar officer) of this local Board of Health upon the introduction of this ordinance and will remain on file there for the use and examination of the public.

Section 4. Any person who violates, or neglects to comply with any provision of this ordinance or code established herein or notice issued pursuant thereto, shall upon conviction thereof, be liable to a penalty of not less than two dollars (\$2.00) nor more than one hundred dollars (\$100.00) for each violation.

Section 5. All ordinances, codes or parts of same inconsistent with any of the provisions of this ordinance and the code established hereunder are hereby repealed to the extent of such inconsistency.

Section 6. In the event that any section, sentence or clause of this ordinance or code shall be declared unconstitutional by a court of competent jurisdiction such declaration shall not in any manner prejudice the enforcement of the remaining provisions.

Section 7. This ordinance and the code herein established shall take effect 30 days after first publication.

**PUBLIC HEALTH NUISANCE CODE OF
NEW JERSEY (1953)**

The Code entitled "Public Health Nuisance Code of New Jersey (1953)" set forth below, was approved September 16, 1953 by the State Department of Health for adoption by reference by local boards of health. It may be adopted without alteration, or if so desired, any numbered section or paragraph may be deleted therefrom, but no substitute section or paragraph may be added as part of the Code being adopted by reference under Chapter 188, P.L. 1950 (R.S. 26:69.1 to 69.6)

It is recommended that this Code be adopted in full. This Public Health Nuisance Code is a general code. More detailed and specific codes in special sanitation fields have been approved for adoption by reference by local boards of health. Specific codes may prove more suitable for local adoption in municipalities having the necessary enforcement facilities. These factors should be considered in adopting the Public Health Nuisance Code of New Jersey (1953).

SECTION I

Definitions as Used in This Code and Ordinance

- 1.1 Enforcing Officials shall mean and include the Health Officer or other official authorized by the Board of Health to enforce this Code and Ordinance.
- 1.2 Person shall mean and include an individual, firm, corporation, association, society, partnership, and their agents or employees.

SECTION II

Nuisances Defined and Prohibited

- 2.1 The following matters, things, conditions or acts and each of them are hereby declared to be a nuisance and injurious to the health of the inhabitants of this municipality:
 - (a) Any matter, thing, condition or act which is or may become detrimental or a menace to the health of the inhabitants of this municipality.
 - (b) Any matter, thing, condition or act which is or may become an annoyance, or interfere with the comfort or general well-being of the inhabitants of this municipality.
 - (c) Pollution, or existence of a condition or conditions which cause or threaten pollution, of any waters in this municipality in such manner as to cause or threaten injury to any of the inhabitants of this municipality either in their health, comfort or property.
 - (d) The escape into the open air from any stack, vent, chimney or any entrance to the open air, or from any fire into the open air of such quantities of smoke, flyash, dust, fumes, vapors, mists, or gases as to cause injury, detriment, or annoyance to the inhabitants of this municipality or endanger their comfort, repose, health or safety.
 - (e) The growth, existence or presence of ragweed on any plot of land, lot, highway, right-of-way or any other public or private place.
 - (f) The growth, existence, or presence of poison ivy within twenty feet of any property line.
 - (g) The existence or presence of any water or other liquid in which mosquito larvae breed or exist.
 - (h) The existence or presence of any accumulation of garbage, refuse, manure, or animal or vegetable matter which may attract flies and to which flies may have access, or in which fly larvae or pupae breed or exist.
 - (i) Depositing, accumulating, or maintaining any matter or thing which serves as food for insects or rodents, and to which they may have access, or which serves or constitutes a breeding place or harborage for insects or rodents in or on any land, premises, building or other place.
- 2.2 It shall be unlawful for any person or persons to commit, maintain or allow any nuisance, as declared and described in this section.

SECTION III

Proper Heating of Apartments

- 3.1 It shall be unlawful for the owner or owners who have agreed to supply heat to any building designed to be occupied or occupied as a residence by more than two families to fail to supply heat from the first day of October in each year to the first day of May of the succeeding year in such manner that the temperature of said building where one or more persons reside shall always be kept at sixty-eight degrees Fahrenheit or above between the hours of six ante meridian and ten post meridian.

SECTION IV

Prohibition of Certain Noises or Sounds

- 4.1 It shall be unlawful for any person to make, cause or suffer or permit to be made or caused upon any premises owned, occupied or controlled by him or it, or upon any public street, alley or thoroughfare in this municipality, any unnecessary noises or sounds by means of the human voice, or by any other means or methods which are physically annoying to persons, or which are so harsh, or so prolonged or unnatural, or unusual in their use, time and place as to occasion physical discomfort, or which are injurious to the lives, health, peace and comfort of the inhabitants of this municipality or any number thereof.

SECTION V

Prohibited Lease or Rental of Certain Buildings

- 5.1 It shall be unlawful for any person to rent, lease or otherwise permit the occupancy of any building as a residence, or for any person to reside in any building as its owner which:
- is not adequately and properly ventilated, or
 - fails to provide potable water at sufficient pressure and quantity for each family unit from a public supply approved by the State Department of Health or a private supply approved by the Enforcing Official, or
 - does not have plumbing fixtures consisting of a kitchen sink, bathtub or shower, lavatory and flush toilet, connected to the potable water supply, or
 - does not have facilities for the discharge of all household liquid wastes into a public sewerage system approved by the State Department of Health, or into a private sewerage system approved by the Enforcing Official.

SECTION VI

Spitting Prohibited

- 6.1 It shall be unlawful for any person to spit upon any public sidewalk or upon any part of the interior or exterior of any public building or public conveyance.

SECTION VII

Inspection of Premises

- 7.1 All places and premises in this municipality shall be subject to inspection by the Board of Health or the Enforcing Official if the Board or that Official has reason to believe that any Section of this Code is being violated.

- 7.2 It shall be unlawful for any person to hinder, obstruct, delay, resist or prevent the Board of Health or the Enforcing Official from having full access to any place or premises upon which a violation of this code is believed to exist.

SECTION VIII

Abatement of Nuisances

- 8.1 Whenever a nuisance as declared by Section II of this Code is found on any plot of land, lot, right-of-way or any other private premises or place, notice in writing shall be given to the owner thereof to remove or abate the same within such time as shall be specified therein but not less than five days from the date of service thereof. A duplicate of the notice shall be left with one or more of the tenants or occupants of the premises or place.
If the owner resides out of the state or cannot be so notified speedily, such notice shall be left at that place or premises with the tenant or occupant thereof, or posted on the premises and such action shall be considered proper notification to the owner, tenant or occupant thereof.
- 8.2 Whenever a nuisance as declared by Section II of this Code is found on any public property or on any highway or any other public premises or place, notice in writing shall be given to the person in charge thereof to remove or abate the same within such time as shall be specified therein. If such person fails to comply with such notice within the time specified therein, the Board of Health may remove or abate such nuisance in the manner as hereinafter provided in the case of a like condition existing on a private premises or place.
- 8.3 If the owner, tenant or occupant upon being notified as provided by this Section shall not comply with such notice within the time specified therein and fails to remove or abate such nuisance, the Board of Health shall proceed to abate the nuisance or may cause it to be removed or abated in a summary manner by such means as said Board shall deem proper.

SECTION IX

Recovery of Costs by Board of Health

- 9.1 The Board of Health may institute an action at law to recover costs incurred by it in the removal or abatement of any nuisance as declared by Section II of this Code from any person who shall have caused or allowed such nuisance to exist, or from any owner, tenant, or occupant of premises who, after notice and notification as herein provided, shall fail to remove and abate the same within the time specified in such notice.

SECTION X

- 10.1 The provisions of this Code shall be enforced by the Board of Health or its Enforcing Official.

3-2 Loitering.

3-2.1 *Definitions.* As used in this section:

a. "Loitering" shall mean remaining idle or walking aimlessly about in essentially one location.

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

c. "Parent" or "guardian" shall mean and include any adult person having care or custody of a minor, whether by reason of blood relationship, the order of any court or otherwise.

3-2.2 *Certain Types of Loitering Prohibited.* No person shall loiter in a public place in such a 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 a public place. This paragraph 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.

3-2.3 *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 subsection 3-2.2, 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 police officer shall be guilty of a violation.

3-2.4 *Loitering by Minors; Notice; Presumption.* No parent or guardian of a minor under the age of 18 years shall knowingly permit that minor to loiter in violation of this section. Whenever any minor under the age of 18 years is charged with a violation of this section, his parent or guardian shall be notified of this fact by the chief of police or any other person designated by the chief of police to give such notice. If at any time within 30 days following the giving of notice, the minor to whom such notice relates again violates 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.

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REPLY TO: Woodbridge

September 23, 2003

Florence Schreiber Powers, Assistant Chief
Judicial Services Unit
Administrative Office of the Courts
State of New Jersey
Richard J. Hughes Justice Complex
P.O. Box 037
Trenton, NJ 08625-0037

**Re: Flemington Ordinances #3-2, #3-7 and
#3-9**

Dear Ms. Powers:

I have conducted further research with regard to the issue as to whether Flemington Borough Ordinance Nos. 3-2 and 3-7 are preempted by the New Jersey Criminal Code. We note also that we have reviewed 3-9.

After reviewing the ordinances, along with their statutory counterparts, we have concluded that Ordinance No. 3-2 is preempted by the New Jersey Criminal Code. We have also reviewed Ordinance Nos. 3-7 and 3-9 and cannot conclude that they are preempted.

GREENBAUM, ROWE, SMITH,
RAVIN, DAVIS & HIMMEL LLP

Florence Schreiber Powers
September 23, 2003
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Should you have any questions, please do not hesitate to contact
me.

Very truly yours,



PETER A. BUCHSBAUM

PAB/pas

ORDINANCE 2003 - 31

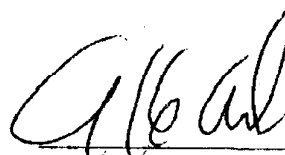
**AN ORDINANCE TO AMEND SUBSECTION 3-2
"LOITERING"
OF THE POLICE DEPARTMENT OF THE
BOROUGH OF FLEMINGTON**

BE IT ORDAINED by the Mayor and Common Council of the Borough of Flemington that subsection 3-2 "Loitering" of the Police Department be deleted in its entirety as it is preempted by NJ Criminal Code.

BE IT FURTHER ORDAINED that this Ordinance shall take effect immediately after final passage and publication according to law.

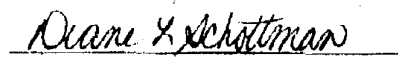
Introduced: October 13, 2003

Adopted: October 27, 2003



Austin H. Kutscher Jr. Mayor

Attest:



Diane L. Schottman, Clerk

BOROUGH OF ELMWOOD PARK CODE

3-7 LOITERING.

3-7.1 Definitions.

As used in this section:

Loitering shall mean remaining idle in essentially one location and shall include the concept of spending time idly, loafing or walking about aimlessly.

Parent and guardian shall mean and 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 shall mean any place in which the public has access and shall include any street or sidewalk. It shall also include the front or the neighborhood of any store, shop, restaurant, tavern or other place of business and the 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 this section, or in the case of a minor, not owned or under control of his parents or guardian.

(1969 Code § 55-8; Ord. No. 78-15)

3-7.2 Prohibited Acts.

No persons shall loiter in a public place in such a 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 persons.
- 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 subsection 3-7.1. This paragraph 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. (1969 Code § 55-8; Ord. No. 78-15)

3-7.3 Failure to Obey Order 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 subsection 3-7.2, the Officer 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. (1969 Code § 55-8; Ord. No. 78-15)

3-7.4 Loitering by Minors.

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 section. (1969 Code § 55-8; Ord. No. 78-15)

3-7.5 Notice of Violation.

Whenever any minor under the age of eighteen (18) years is charged with a violation of this section, 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. (1969 Code § 55-8; Ord. No. 78-15)

3-7.6 Presumption.

If at any time within thirty (30) days following the giving of notice as provided in subsection 3-7.5, the minor to whom such notice relates again violates 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/her parent or guardian. (1969 Code § 55-8; Ord. No. 78-15)

3-7.7 Violation and Penalty.

Any person violating any of the provisions of this section shall, upon conviction, be liable to the penalty stated in Chapter I, Section 1-5. (1969 Code § 55-8; Ord. No. 78-15; New)

Ord. # 05-17

**AN ORDINANCE REPEALING ORDINANCE 3-7,
(1969 Code § 55-8; Ord. No. 78-15), LOITERING.**

BE IT ORDAINED, by Mayor and Council of the Borough of Elmwood Park as follows:

WHEREAS, the Mayor and Council of the Borough of Elmwood Park desires that Ordinance 3-7 (1969 Code § 55-8; Ord. No. 78-15), Loitering, be repealed; and

WHEREAS, Ordinance 3-7 (1969 Code § 55-8; Ord. No. 78-15), Loitering, has been preempted and rendered unenforceable by the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 to 98-4.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE BOROUGH OF ELMWOOD PARK, BERGEN COUNTY, NEW JERSEY, AS FOLLOWS:

SECTION 1. That Ordinance 3-7 (1969 Code § 55-8; Ord. No. 78-15), Loitering, is hereby repealed.

SECTION 2. The repeal of Ordinance 3-7 (1969 Code § 55-8; Ord. No. 78-15), Loitering, shall not effect any duty imposed, any penalty incurred, nor any action or proceeding as commenced under or by virtue of the ordinance repealed.

SECTION 3. That this Ordinance shall take effect and be in full force from and after the date of its passage and approval pursuant to law.

Richard A. Mola.

Richard A. Mola, Mayor Date

ATTEST:

Dolores Camlet
Dolores Camlet, Borough Clerk

(2)

1st Reading - June 2, 2005
2nd Reading - June 16, 2005