



# 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: [lpasmc@pobox.com](mailto:lpasmc@pobox.com)*

April 24, 2015

John M. Mitch, Clerk  
Township of Woodbridge  
1 Main Street  
Woodbridge, New Jersey

*(via E-mail only to [john.mitch@twp.woodbridge.nj.us](mailto:john.mitch@twp.woodbridge.nj.us))*

Dear John:

After I visited your office on March 26th, I stopped by the municipal court to learn whether it, like many courts, is allowing statutory charges to be downgraded to violations of superseded and preempted municipal code violations. Unfortunately, my research suggests that this is what the court has been doing.

To illustrate my point, I am attaching only two of approximately 100 pages that I've received from the court administrator. The first page is Woodbridge's "Local Offense List." Highlighted on that page is an entry for Woodbridge Code § 3-30.1 entitled Prohibited Acts. The presence of it on the Local Offense List indicates that the municipal court and the state's Automated Complaint System recognize it as a valid municipal code under which convictions may be entered.

The second page is a "Law Enforcement Disposition Report" with a highlighted entry showing that the recipient of Summons/Complaint No. S-2014-002630 was found guilty of § 3-30.1 on March 2, 2015 and fined \$500 plus \$33 in various court costs. (I found many similar examples of convictions § 3-30.1 violations, but am only providing you this one as an example.)

While my research into this matter is on-going, I do feel that it is appropriate at this time for me to ask that the Township have its attorney review § 3-30.1, which is part of Code Chapter 3-30, Disorderly Conduct. The entire chapter, taken from the on-line version of the Woodbridge Municipal Code, is also attached. I believe that most of it, if not all of it, is preempted by the New Jersey Criminal Code.

In 2003, the Appellate Division found that Chapter 33 of the New Jersey Criminal Code "reveals a policy to comprehensively address street behavior and other conduct in public places which may disturb citizens and disrupt peaceful society."<sup>1</sup> The Legislature, the court found, recognized the tension between controlling "street behavior" and safeguarding citizens' free speech and assembly rights. Therefore, it

---

<sup>1</sup> See State v. Paserchia, 356 N.J. Super. 461, 466 (App.Div.2003).

decided to regulate “street behavior” so comprehensively at the state level that there was no room left for local regulation of the same conduct.<sup>2</sup>

But, Woodbridge Code § 3-30.1 also attempts to regulate "street behavior" such as provoking breaches of the peace, congregating on the sidewalk and making abusive or offensive remarks. Code § 3-30.1(e), for example, prohibits people from congregating on the sidewalks "to interfere in any way with the free passage of any person lawfully thereon or therein."

Code § 3-30.1(e), in the hands of an unscrupulous mayor or police chief, could be used as a pretext to prevent peaceful citizens from assembling on a public sidewalk near a municipal building to protest against taxes or upon some other public issue. For this reason, Code § 3-30.1(e)'s statutory counterpart—N.J.S.A. 2C:33-7<sup>3</sup>—expressly requires the police to accommodate free expression and assembly rights. Under the statute, the police must first try to limit the size of the crowd or move it to a different location. And, in order to prove a violation of the statute, the prosecution must prove that the obstruction was done “purposely or recklessly.” Woodbridge’s Code § 3-30.1(e), however, does not contain any such protections. The ordinance simply declares that it is *per se* illegal for a group of people to congregate on a Township sidewalk in a manner that obstructs pedestrians. Do you see how much more discretion the police have under the ordinance as opposed to the statute? Do you understand why giving the police this expansive discretion concerns Libertarians and others who seek to safeguard citizens’ free speech and assembly rights?

The bottom line is this: The State of New Jersey has already struck a balance between public assembly and expression rights and the government’s need for peace and good order on the streets. Woodbridge Township, as a subordinate subdivision of the State, is not permitted to strike a different balance between these competing interests through local legislation. Accordingly, Code § 3-30.1(e) (and probably Chapter 3-30 in its entirety) is invalid and should be repealed to the extent that it attempts to regulate adults’ street behavior. Further, any other code provisions that Woodbridge

---

<sup>2</sup> It is likely that there is no such thing as a local code provision that can validly regulate adult street conduct. See, [New Jersey Law Journal](#), "Yet Another Municipal Ordinance Is Struck Down on Pre-emption Grounds" January 13, 2003, by Mary P. Gallagher.

<sup>3</sup> That statute reads: “**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.”

has on the books that regulate adult street behavior, such as Chapter 3-26 - Loitering<sup>4</sup>, are also preempted by state law.

Would you please ask your municipal attorney to review and publicly report on the validity of these and other code provisions that seek to regulate adult "street conduct" and let me know the results of that review?

Thank you for your attention to this matter. I look forward to receiving your or your attorney's response.

Sincerely,



John Paff

---

<sup>4</sup> Note that Code § 3-26.2, which makes it illegal to "loiter" in a manner as to "obstruct the free passage of pedestrians or vehicles." is preempted for the same reasons noted above.

REPORT ID: CMC0730C  
 RUN DATE : 04/18/2015  
 RUN TIME : 00:05

NJ AUTOMATED COMPLAINT SYSTEM  
 LOCAL OFFENSE LIST  
 WOODBRIDGE MUNICIPAL COURT

PAGE: 2

COURT	OFFENSE	DESCRIPTION	FINE	COST	VCCB	MISC	PAY	DRUG	DGREE	INACT
1225	3-12.3	POSSESSION OF HIGHPOWERED WATER GUN	\$0.00	\$0.00	\$0.00	\$0.00	N	N	N	A
1225	3-30	DISORDERLY CONDUCT	\$0.00	\$0.00	\$0.00	\$0.00	N	N	N	A
1225	3-30.1	PROHIBITED ACTS	\$0.00	\$0.00	\$0.00	\$0.00	N	N	N	A
1225	3-30.1A	PROVOKE A BREACH OF THE PEACE	\$0.00	\$0.00	\$0.00	\$0.00	N	N	N	A
1225	3-30.1B	CONGREGATE WITH INTENT TO PROVIDE A BREACH OF PEACE	\$0.00	\$0.00	\$0.00	\$0.00	N	N	N	A
1225	3-30.1C	CONGREGATE WITH OTHER PERSONS IN PUBLIC PLACE	\$0.00	\$0.00	\$0.00	\$0.00	N	N	N	A
1225	3-30.1D	USE LOUD, ABUSIVE OR OFFENSIVE REMARKS IN PUBL	\$0.00	\$0.00	\$0.00	\$0.00	N	N	N	A
1225	3-30.1E	CONGREGATE TO INTERFERE WITH FREE PASSAGE OF ANY PERSO	\$0.00	\$0.00	\$0.00	\$0.00	N	N	N	A
1225	3-30.2	INTERFERING WITH POLICE	\$0.00	\$0.00	\$0.00	\$0.00	N	N	N	A
1225	4.1	PUB HLTH: PROHIBITION OF CERTAIN NOISES OR SOUNDS	\$0.00	\$0.00	\$0.00	\$0.00	N	N	N	A
1225	4-2.19	GENERAL REGULATIONS FOR PEDDLERS/SOLICITORS	\$0.00	\$0.00	\$0.00	\$0.00	N	N	N	A
1225	4-4	DISTRIBUTION OF COMMERCIAL ADVERTISING MATTER	\$0.00	\$0.00	\$0.00	\$0.00	N	N	N	A
1225	4-7.18(5)	OVERCHARGING BY CHARGING FOR SERVICES NOT ALLOWED	\$0.00	\$0.00	\$0.00	\$0.00	N	N	N	A
1225	4-18	SALES-MINORS,MENTALLY DEFECTIVE,DRUNKARDS PROHI	\$0.00	\$0.00	\$0.00	\$0.00	N	N	N	A
1225	4-19	CRIMINALS PROHIBITED ON PREMISES	\$0.00	\$0.00	\$0.00	\$0.00	N	N	N	A
1225	4-20	IMMORAL CONDUCT,DISTURBANCE	\$0.00	\$0.00	\$0.00	\$0.00	N	N	N	A
1225	4-21	ENTRY OF PREMISES/MINORS FOR PURCHASE/SVC PROHIBITED	\$0.00	\$0.00	\$0.00	\$0.00	N	N	N	A
1225	4-22	CONSUMPTION OR PURCHASE BY MINORS PROHIBITED	\$0.00	\$0.00	\$0.00	\$0.00	N	N	N	A

REPORT ID :CMC6030  
 RUN DATE :04/04/2015  
 RUN TIME :16:00

NJ AUTOMATED COMPLAINT SYSTEM  
 LAW ENFORCEMENT DISPOSITION REPORT  
 WOODBRIDGE MUNICIPAL COURT  
 FROM 03/01/2015 TO 03/31/2015

PAGE: 22  
 RUN :MONTHLY

OFFICER NAME: HUBBARD PTL. ID: 1225 0605

COMPLAINT NUMBER	OFFENSE DATE	OFFENSE NUMBER	DISPOSED DATE	FINDING	FINE	COST	MISC	DISPOSITION
S 2013 000323	01/18/2013	2C:35-10A(4)	10/15/2014	COND-DISCHARG	\$ .00	\$28.00	\$905.00	COND Y 1

OFFICER NAME: BISSET PTL. ID: 1225 0608

COMPLAINT NUMBER	OFFENSE DATE	OFFENSE NUMBER	DISPOSED DATE	FINDING	FINE	COST	MISC	DISPOSITION
S 2014 002835	12/30/2014	2C:18-3A	03/26/2015	GUILTY	\$50.00	\$28.00	\$5.00	
		2C:12-1A(1)	03/26/2015	DISMISSED-OTHER	\$ .00	\$ .00	\$ .00	
		2C:29-2A(1)	03/26/2015	DISMISSED-OTHER	\$ .00	\$ .00	\$ .00	
W 2013 000345	01/21/2013	2C:35-10C	03/26/2015	COND-DISCHARG	\$ .00	\$28.00	\$805.00	COND Y 1
W 2015 000132	01/21/2015	2C:29-9B	03/12/2015		\$ .00	\$ .00	\$ .00	

OFFICER NAME: STERLACCI PTL. ID: 1225 0610

COMPLAINT NUMBER	OFFENSE DATE	OFFENSE NUMBER	DISPOSED DATE	FINDING	FINE	COST	MISC	DISPOSITION
S 2014 002629	11/27/2014	2C:29-2A(1)	03/02/2015	DISMISSED-OTHER	\$ .00	\$ .00	\$ .00	
S 2014 002630	11/27/2014	3-30.1	03/02/2015	GUILTY	\$500.00	\$28.00	\$5.00	
W 2014 000423	02/19/2014	2C:20-11B(1)	12/15/2014	GUILTY	\$500.00	\$28.00	\$130.00	JAIL D 30

OFFICER NAME: WILDER PTL. ID: 1225 0611

COMPLAINT NUMBER	OFFENSE DATE	OFFENSE NUMBER	DISPOSED DATE	FINDING	FINE	COST	MISC	DISPOSITION
S 2014 002739	12/12/2014	2C:12-1A	03/10/2015	DISMISSED-OTHER	\$ .00	\$ .00	\$ .00	
SCB 2015 015444	01/15/2015	9-70	02/25/2015	GUILTY	\$100.00	\$28.00	\$5.00	
W 2013 003267	12/18/2013	2C:12-1A(1)	03/02/2015	GUILTY	\$750.00	\$28.00	\$130.00	
		2C:20-3A	03/02/2015	DISMISSED-OTHER	\$ .00	\$ .00	\$ .00	
W 2014 002840	12/31/2014	2C:12-1A	03/10/2015	DISMISSED-OTHER	\$ .00	\$ .00	\$ .00	

OFFICER NAME: HIGGINS PTL. ID: 1225 0612

COMPLAINT NUMBER	OFFENSE DATE	OFFENSE NUMBER	DISPOSED DATE	FINDING	FINE	COST	MISC	DISPOSITION
S 2013 002052	08/07/2013	2C:35-10A(4)	03/16/2015	DISMISSED-OTHER	\$ .00	\$ .00	\$ .00	
S 2014 001620	06/22/2014	2C:35-10C	03/23/2015	GUILTY	\$100.00	\$28.00	\$180.00	

### 3-30 DISORDERLY CONDUCT.

#### **3-30.1 Acts Prohibited.**

It shall be unlawful for any person to:

- a. Provoke a breach of the peace on any public street, sidewalk, building, school property and/or school facility or other public place in the Township.
- b. Congregate with other persons on a public street, sidewalk, building, school property and/or school facility or other public place in the Township with an intent to provide a breach of the peace or whereby a breach of the peace may be occasioned, and refuse to move therefrom after being requested to do so by a Police Officer of the Township.
- c. Congregate with other persons on a public street, sidewalk, building, school property and/or school facility or other public place in the Township with an intent to provoke a breach of the peace or whereby a breach of the peace may be occasioned, and refuse to move therefrom after being requested to do so by a Police Officer of the Township.
- d. Use loud, abusive or offensive remarks, while on or in public street, sidewalk, school, property and/or school facility or other public place, in the Township, to persons passing along the public street, sidewalk, building, school property and/or school facility or other public place in the Township.
- e. Congregate on a public street, sidewalk, building, school property and/or school facility or other public place in the Township and molest or interfere in any way with the free passage of any person lawfully thereon or therein.

#### **3-30.2 Interfering With Police Prohibited.**

- a. No person shall, in any manner, resist or interfere with any member of the Police Force of the Township in the discharge of his duty.
- b. It shall be unlawful for any person to challenge to fight, assault, strike, verbally abuse or make derogatory remarks to a Police Officer in the performance of his duties.

#### **3-30.3 Trespassing Upon Cultivated Land Prohibited.**

No person shall trespass upon any lands or premises in the Township which are under cultivation or in process of cultivation for the raising of food of any kind for human consumption or for the feed of animals, including lands sown to hay or other pasture, or which are being used for the purpose of raising poultry or food animals. (1974 Code § 15-4)

#### **3-30.4 Penalty.**

Unless another penalty is expressly provided herein, any person who violates any provision of this chapter shall, upon conviction therefor, be liable to the penalty stated in Chapter I, Section 1-5. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues. (1974 Code § 15-1)