



New Jersey Libertarian Party

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May 11, 2012

Hon. Stuart Fierstein, Mayor and members of the
Allentown Borough Council
8 North Main St
Allentown, NJ 08501

Dear Mayor Fierstien and Borough Members:

I just learned that Allentown has enacted a loitering ordinance (03-2012) at your meeting on May 8th.

The members of the borough council should be made aware that such an ordinance is illegal in the state of NJ. When the NJ Code of Criminal Justice was enacted in 1979, it specifically excluded loitering. Loitering laws were excluded from the state code because they invited abuse of citizens by officials and by the police. They violate a citizen's right to peacefully assemble.

Courts have held that the enactment of this Code of Criminal Justice preempts local ordinances and that local loitering laws have been found to be illegal. In *State v. Paserchia*, the Appellate Division found that part of the New Jersey Criminal Code, N.J.S.A. 2C:33, "*reveals a policy to comprehensively address street behavior and other conduct in public places which may disturb citizens and disrupt peaceful society.*" The Legislature, recognizing the tension between controlling "street behavior" and safeguarding citizens' free speech and assembly rights, decided to regulate "street behavior" so comprehensively that there was no room left for local regulation of the same conduct.

State v. Paserchia references *State v. Crawley*:

"In State v. Crawley, supra, the Court addressed a municipal loitering statute and found it was preempted by the exclusion of any general provision prohibiting loitering in the Code. An examination of Chapter 33 of the Code, which deals extensively with street conduct of the same type as loitering, and the exclusion of a loitering provision from a draft prior to enactment, provided ample evidence of a State policy to decriminalize such behavior."

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. Allentown, as a subordinate subdivision of the State, is not permitted to strike a different balance between these competing interests through local legislation. Accordingly, Ord. 03-2012 is invalid by reason of preemption and should be promptly repealed to avoid costly litigation.

The NJ Libertarian Party Preempted Ordinance Repeal Project has had loitering and similar laws repealed in over 30 towns. An overview of the Project's success can be found at www.lpcnj.org/OGTF/Loiter.html

Thank you for your attention to this matter, I look forward to your response.

Jay Edgar
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Chair, NJLP

cc: John Paff, Chair NJLP Preempted Ordinance Repeal Project., Donald Driggers (via Fax)

Ref: *State v. Paserchia* <http://caselaw.findlaw.com/nj-superior-court-appellate-division/1385271.html>