

**ORDINANCE #873-23  
BOROUGH OF LITTLE SILVER**

**ORDINANCE REPEALING § 5-1.13, § 5-2, § 5-3(A), AND § 5-22 OF CHAPTER 5  
“POLICE REGULATIONS” OF THE REVISED GENERAL ORDINANCES OF  
THE BOROUGH OF LITTLE SILVER, COUNTY OF MONMOUTH, AND  
STATE OF NEW JERSEY**

**WHEREAS**, over time, changes have arisen in state and federal law that impact the Revised General Ordinances of the Borough of Little Silver (“Borough Code”); and

**WHEREAS**, review by the federal judiciary of local laws outside of New Jersey bearing significantly similar language to Borough Code § 5-1.13(b) has led to such laws being overturned for First Amendment purposes under the United States Constitution; and

**WHEREAS**, decisions by the New Jersey Judiciary and changes to the state’s criminal code by the New Jersey legislature have invalidated loitering ordinances such as that found in Borough Code § 5-2; and

**WHEREAS**, decisions by the New Jersey Judiciary and changes to the state’s criminal code by the New Jersey legislature indicate local ordinances such as those found in Borough Code § 5-1.13(a), § 5-3(a), and § 5-22 are no longer valid exercises of municipal authority; and

**WHEREAS**, N.J.S.A. 2C:33 of the New Jersey criminal code was enacted by the New Jersey legislature with the intention to address the disorderly conduct concerns which are at the root of Borough Code § 5-1.13(a), § 5-2, § 5-3(a), and § 5-22.

**NOW THEREFORE BE IT ORDAINED** by the Mayor and Borough Council of the Borough of Little Silver, County of Monmouth, and State of New Jersey, that certain sections of the Borough Code be amended as follows (additions to text indicated by **bold text**; deletions to text indicated by ~~strikeout~~):

**SECTION 1.** Chapter 5, Section 1.13 of the Revised General Ordinances of the Borough of Little Silver is hereby amended as follows:

**~~§ 5-1.13 Handbills Offensive to Public Morals Prohibited.~~**

~~It shall be unlawful for any person to post, to hand out, distribute or transmit any sign, or any commercial or noncommercial handbill:~~

- ~~a. Which may reasonably tend to incite riot or other public disorder, or which advocates disloyalty to or the overthrow of the Government of the United States or of this state by means of any artifice, scheme, or violence, or which urges any unlawful conduct, or encourages or tends to encourage a breach of the public peace or good order of the community.~~

~~b. Which is offensive to public morals or decency, or which contains blasphemous, obscene, libelous or scurrilous language.~~

SECTION 2. Chapter 5, Section 2 of the Revised General Ordinances of the Borough of Little Silver is hereby amended as follows:

~~§ 5-2 LOITERING.~~

~~§ 5-2.1 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.~~

~~§ 5-2.2 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.~~

~~§ 5-2.3 Violation.~~

Any person violating the provisions of subsection 5-2.2 shall be ordered to move on by a police officer, failing which he shall be guilty of a violation.

~~§ 5-2.4 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 given 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.~~

**SECTION 3.** Chapter 5, Section 3(a) of the Revised General Ordinances of the Borough of Little Silver is hereby amended as follows:

~~§ 5-3 NOISE.~~

~~a. No person shall make, aid, countenance or assist in making any improper noise, riot, disturbance or breach of the peace in or upon any street, highway, thoroughfare, sidewalk, building or other public or quasi-public place, or upon private property which is not his own, or disquiet or disturb any congregation or assembly of any kind whatsoever in any church or other building by any rude, disorderly or indecent behavior of any kind.~~

~~b. a. No person shall make or permit the making of any disturbing noise by the use of a phonograph, radio, television, musical instrument, or devices, producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of their neighbors. The operation of any such sets, instruments, or devices between the hours of 10:00 p.m. and 7:00 a.m., Monday through Saturday and 10:00 p.m. and 9:00 a.m., Sunday, in such a manner as to be plainly audible at a distance of 50 feet from the building or vehicle in which it is located, shall be prima facie evidence of a violation of this section.~~

~~e. b. No audible noise by landscape, erection, excavation, demolition, alteration or repair of any building other than between the hours of 7:30 a.m. and 7:00 p.m. Monday through Friday and 9:00 a.m. and 6:00 p.m. on Saturday and Sunday by a landscaper or contractor for hire, except in the case of urgent matters and the interest of public health and safety. Any of the aforementioned performed by a property owner or tenant thereof between the hours of 7:30 a.m. and 8:00 p.m. Monday thru Friday, and 9:00 a.m. and 8:00 p.m. Saturday and Sunday.~~

**SECTION 4.** Chapter 5, Section 22 of the Revised General Ordinances of the Borough of Little Silver is hereby amended as follows:

~~§ 5-22 DISTURBANCES OF PEACE AND GOOD ORDER.~~

~~a. Places of Public or Private Assembly. No person shall disturb or interfere with the quiet or good of any place of assembly, public or private, including but not by way of~~

~~limitation, schools, churches, libraries and reading rooms, by noisy, indecent or disorderly conduct.~~

~~b. Public or Quasi-Public Places. No person shall create a disturbance or breach of the peace in or upon any public street or public or quasi-public or in any public conveyance, or in or upon any private property not his own.~~

**SECTION 5.** All ordinances or parts of ordinances which are inconsistent with the provisions of this ordinance are, to the extent of such inconsistency, hereby repealed. All portions of the ordinance not modified herein remain in full force and effect.

**SECTION 6.** Should any section, clause, sentence, phrase or provision of this ordinance be declared unconstitutional or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the remaining portions of this ordinance.

**SECTION 7.** This ordinance shall take effect upon final passage, adoption and publication in the manner prescribed by law.

Council	Motion	2 <sup>nd</sup>	Ayes	Nays	Abstain	Absent
Councilwoman Brannagan	X		X			
Councilman Brennan			X			
Councilman Christensen			X			
Councilman Galante			X			
Councilman Holzapfel						X
Councilman Smith		X	X			
Mayor Neff						
		<b>VOTE</b>	<b>6</b>	<b>0</b>		

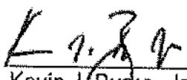
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**ORDINANCE #873-23:**

**Public Hearing September 18, 2023**

Introduced: August 14, 2023

I, Kevin J. Burke, Jr., Borough Administrator/ Borough Clerk of the Borough of Little Silver do hereby certify that the foregoing is a true copy of Ordinance #873-23, that was introduced after the first reading at a meeting held on August 14, 2023, of the Borough Council of the Borough of Little Silver.

  
 Kevin J. Burke, Jr.  
 Administrator/Borough Clerk

