

AN ORDINANCE ESTABLISHING A CURFEW FOR PERSONS AGED 17 YEARS AND UNDER AFTER THE HOUR OF 11:00 P.M. UNLESS EXCEPTED HEREIN: PRESCRIBING THE MANNER OF ENFORCEMENT AND FIXING THE PENALTY FOR VIOLATION OF THIS ORDINANCE.

THE BOROUGH OF UNION CITY HEREBY ORDAINS AS FOLLOWS:

Section 1: Purpose: This Ordinance is in accordance with the prevailing community standards and regulations for the conduct of minors on streets at night, effectively enforced, taught in homes, all for the good of minors, for the furtherance of family responsibility, and for the public good, safety and welfare. This community sense of the proper time for cessation of outdoor activities by minors on the streets is reflected in the curfew hour declared by this Ordinance, which takes into consideration the danger hours for nocturnal crime and for accumulation of minors with potential risk incident to immaturity.

Section 2. Definitions.

1. Street - a way or place, of whatsoever nature, open to the use of the public as a matter of right for purposes of vehicular travel or in the case of a sidewalk thereof for pedestrian travel. The term street includes the legal right-of-way, including but not limited to the cartway of traffic lanes, the curb, the sidewalks, whether paved or unpaved, and any grass plots or other grounds found within the legal right-of-way of a street. The term street applies irrespective of what it is to be called or formally named, whether alley, avenue, court, road, or otherwise.
2. Time of Night - referred to herein is based upon the prevailing standard of time, whether Eastern Standard Time or Eastern Daylight Saving Time, generally observed at the hour by the public in the Borough, prima facie the time then observed in the Borough Secretary's office and police station.
3. Year of Age - continues from one birthday, such as the seventeenth to (but not including the day of) the next, such as the eighteenth birthday, making it clear that 17 or less years of age is herein treated as equivalent to the phrase "under 18 years of age," the latter phrase in practice, unfortunately, having confused a number of persons into the mistaken thought that 18 year olds might be involved. Similarly, for example, 11 or less years of age means "under 12 years of age."
4. Minor - is a person under 18 years of age.

Section 3: Curfew for Minors. It shall be unlawful for any person 17 or less years of age (under 18 years of age) to remain in or upon any street or in any park or public place in the Borough of Union City at night between the hours of 11:00 p.m. and 6:00 a.m.

Section 4: Exceptions. In the following exceptional cases a minor on a Borough street during the nocturnal hours for which Section 3 is intended to provide the maximum limits of regulation (and a clear general guide for minors, their parents, and their fellow citizens) shall not, however, be considered in violation of the Curfew Ordinance.

1. When accompanied by a parent of such minor.
2. When accompanied by an adult authorized by a parent of such minor to take said parent's place in accompanying said minor for a designated period of time and purpose within a specified area.
3. When exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech and the right of assembly, a minor shall evidence the validity of such exercise by first delivering to Communications Center personnel at the Borough Building at 13 North Main Street, Union City, where and by whom high priority messages to the Mayor are regularly received, a written communication, signed by such minor and countersigned if practicable by parent of such minor with their home address and telephone number, addressed to the Mayor of the Borough, specifying when, where, and in what manner said minor will be on the streets at night (during hours when the Curfew Ordinance is otherwise applicable to said minor) in the exercise of a First Amendment right specified in such communication.
4. In case of reasonable necessity, but only after such minor's parent has communicated to the Borough Police Station personnel the facts establishing such reasonable necessity relating to specified streets, at a designated time for a described purpose, including points of origin and destination. A copy of such communication, or of the police record thereof, with an appropriate notation of the time it was received and of the names and addresses of such parent and minor, shall be admissible evidence.
5. When a minor is on the sidewalk of the place where such minor resides, or onto the sidewalk of either next door neighbor not communicating an objection to the police officer.
6. When returning home, by a direct route from (and within thirty (30) minutes of the termination of) a school activity, or an activity of a

religious, or other voluntary association, of which prior notice, indicating the place and probable time of termination, has been given in writing to, and duly filed for immediate reference by, the Chief of Police or the officer assigned by him on duty at the police station, thus encouraging (here as in other exceptional situations) conduct on the part of minors involved and striking a fair balance for any somewhat conflicting interests.

- 7. When authorized by special permit from the Mayor, carried on the person of the minor thus authorized, as follows. When necessary nighttime activities of a minor may be inadequately provided for by other provisions of this Section, then recourse may be had to the Mayor of the Borough, either for a regulation as provided in subsection (8) or for a special permit as the circumstances warrant. Upon the Mayor's finding of necessity for the use of the streets, to the extent warranted by a written application signed by a minor and by a parent of such minor, if feasible, stating (a) the name, age and address of such minor, (b) the name, address and telephone number of a parent thereof, (c) the height, weight, sex, color of eyes and hair and other physical characteristics of such minor, (d) the necessity which requires such minor to remain upon the streets during the curfew hours otherwise applicable, and (e) the street or route and the beginning and ending of the period of time involved by date and hour, the Mayor may grant a permit in writing for the use by such minor of such streets at such hours as in the Mayor's opinion may reasonably be necessary. In an emergency this may be handled by telephone or other effective communication with a corresponding record being made contemporaneously, either to the Mayor, or if unavailable, to the police officer authorized by the Mayor to act on his behalf in an emergency, at the police station.
- 8. When authorized by regulation issued by the Mayor, in other similar cases of reasonable necessity, similarly handled but adapted to necessary nighttime activities of more minors than can readily be dealt with on an individual special permit basis. Normally, such regulation by the Mayor permitting use of the streets should be issued sufficiently in advance to permit appropriate publicity through news media and through other agencies such as the schools, and shall define the activity, the scope of the use of the streets permitted, the period of time involved, not to extend more than thirty (30) minutes beyond the time for termination of such activity, and the reason for finding that such regulation is reasonably necessary.
- 9. When the minor carries a certified card of employment, renewable each calendar month when the current facts so warrant, dated or re-issued not more than forty-five (45) days previously, signed by the Chief of Police or

Mayor and briefly identifying the minor, the address of his home and of his place of employment, and his hours of employment.

10. When the minor is, with parental consent, in a motor vehicle This contemplates normal travel. From excess of caution, this clearly exempts bona fide interstate movement through the Borough of Union City. This also exempts interstate travel beginning or ending in the Borough of Union City.
11. When the minor is seventeen (17) years of age, if and when the Mayor shall have determined, by formal rule first reported to Borough Council, spread upon its minutes and so reported in the press, finding the facts as to the extent (minimal) of juvenile delinquency in such age group permitting such rule, currently, in the best interests of said minors of the Borough, finding the facts as to those thus within one year of adulthood and finding that the Curfew Ordinance should be relaxed, then the Mayor by such formal rule, covering a period of time designated therein or until rescission thereof, not exceeding one year from the date hereof, may take appropriate action excepting designated minors, minors in a defined group or area, or all minors (as the current facts may warrant) seventeen (17) years of age at the date or attaining seventeen (17) years of age during the period that such formal rule is and remains in effect.
12. Each of the foregoing exceptions, and their several limitations, such as provisions for notification, are severable, as hereinafter provided but here reemphasized; and additional, also severable, exceptions, broadening with the progress toward maturity of minors enrolled respectively in elementary, junior high and high schools, will be considered by council as warranted by future experience illuminated by the views of student government associations, school personnel, citizens, associations, ward and neighborhood spokesmen, parents, officers and persons in authority concerned positively with minors as well as with juvenile delinquency.

Section 5: Parental Responsibility. It shall be unlawful for a parent having legal custody of a minor knowingly to permit or by inefficient control to allow, such minor to be or remain upon any Borough street under circumstances not constituting an exception to, or otherwise beyond the scope of, the Curfew Ordinance. The term knowingly includes knowledge which a parent should reasonably be expected to have concerning the whereabouts of a minor in that parent's legal custody. It is intended to continue to keep neglectful or careless parents up to a reasonable community standard of parental responsibility through an objective test. It shall be no defense that a parent was completely indifferent to the activities or conduct or whereabouts of such minor.

Section 6. Police Procedures. A police officer of the Borough, upon finding or having attention called to any minor on the streets in prima facie violation of the Curfew Ordinance, normally shall take the minor to the Borough Police Station, where a parent shall immediately be notified to come for such minor, whereupon they shall be interrogated. This is intended to permit ascertainment, under constitutional safeguards, of relevant facts, and to centralize responsibility in the officer there and then on duty of accurate, effective, fair, impartial and uniform enforcement, and recording, thus making available experienced supervisory personnel, the best of facilities and access to information and records. In the absence of convincing evidence such as birth certificate, a policeman on the street shall in the first instance use his best judgment in determining age.

- A. Police procedures shall constantly be redefined in the light of experience and may provide, inter alia, that the police officer may deliver to a parent thereof a minor under appropriate circumstances, for example a minor of tender age near home whose identity and address may readily be ascertained or are known.
- B. In any event such police officer shall within twenty-four (24) hours file a written report with the Chief of Police, or shall participate to the extent of the information for which he is responsible in the preparation by himself and the officer involved in such case, and in the filing of such report within twenty-four (24) hours.
- C. When a parent comes to the Borough Police Office to take charge of a person who is in violation of this Ordinance, after the appropriate information has been recorded, the person shall be released to the custody of such parent. If the parent cannot be located, the officers shall attempt to find a relative, neighbor, or other responsibility for the person who is in violation of this Ordinance until the availability or arrival of a parent. In the absence of any responsible adult to assume responsibility for the person who is in violation of this Ordinance, the officer will contact the duty juvenile probation officer and, after providing the juvenile probation officer with all available information, take whatever action is directed by the juvenile probation officer.
- D. In the case of a first violation by a minor, the Chief of Police shall, by certified mail or hand delivered, send to a parent written notice of said violation with a warning that any subsequent violation will result in full enforcement of the Curfew Ordinance, including enforcement of parental responsibility and of applicable penalties.
- E. The Chief of Police shall be responsible for maintaining a file of such reports of person who have previously been in violation of this Ordinance

so that the proper status of a person alleged to be in violation can be determined and the appropriate action of a warning letter to the parents for a first violation or citation to the parents for a second or subsequent violation can be determined and taken.

- F. If the person who is in violation of this Ordinance cannot be released to a parent within one-half year of the time he or she has been taken into custody, the information regarding the length of time the juvenile was in custody and the efforts taken to find a responsible adult to accept responsibility for the person shall be documented in the required report and shall be entered in the required log maintained to track juveniles taken into custody by the police department for the state authorities.

Section 7. Penalties. Prevailing community standards, and the real internalization thereof or interpersonal sanctions therefor that in practice count for much, as to when minors should be off the streets, reflected in this Curfew Ordinance, are hereby supported with the following legal sanctions.

1. If, after the warning notice pursuant to Section 6 of a first violation by a minor, a parent violates Section 5 (in connection with a second violation by said minor), this shall be treated as a first offense by the parent. For such first parental offense, a parent shall be fined twenty-five dollars (\$25.00), and for each subsequent offense by a parent the fine shall be increased by an additional twenty-five dollars (\$25.00), e.g. fifty dollars (\$50.00) for the second, and not more than six hundred (\$600) for the third offense. The District Justice, upon finding a parent guilty, shall sentence the parent to pay such fine and costs of prosecution, and upon refusal to pay such fine and costs, to be imprisoned in the jail of Erie county for a period not exceeding thirty (30) days.
2. Any minor who shall violate any of the provisions of the Curfew Ordinance more than three (3) times shall be reported by the Mayor to a society or organization whose purpose it is to take charge of incorrigibles and delinquents and proceedings shall then be taken under the Juvenile Court, 42 Pa.C.S. 6201 et seq., before the juvenile court for the treatment, supervision, and rehabilitation of such minor.
3. A like procedure, before the juvenile authorities, shall be followed in any case where the imposing of a fine or fines upon a parent shall not be effective, or where for any other reason the provisions of the Curfew Ordinance cannot be effective by the imposing of penalties under this Section.

Section 8. Construction. Severability is intended throughout and within the provisions of the Curfew Ordinance. If any provision, including inter alia, any exception, part, phrase or term, or the application thereof, to any person or circumstance is held invalid, the application to other persons or circumstances shall not be affected thereby and the validity of the Curfew Ordinance in any and all other respects shall not be affected thereby. From excess of caution, the Mayor is authorized to give advisory opinions, in writing or immediately reduced to writing, which shall be binding, and shall be adhered to by the police, until the ordinance is amended in such respect, interpreting terms, phrases, parts, or any provisions. Normally such advisory opinions shall be in response to good faith, signed letters addressed to him at the Borough Administration Building, questioning as (a) ambiguous, (b) as having a potentially chilling effect on constitutional rights specifically invoked, or (c) as otherwise invalid, in all three categories with respect to proposed conduct definitely described. This administrative remedy must be exhausted prior to presenting to any court a question in any of said three categories. Borough Council does not intend a result that is absurd, impossible of execution or unreasonable. It is intended that the Curfew Ordinance be held inapplicable in such cases, if any, where its application would be unconstitutional. A constitutional construction is intended and shall be given. Council does not intend to violate the Constitution of the Commonwealth of Pennsylvania or the Constitution of the United States of America.

Section 9. Continuing Evaluation. Borough Council will continue its evaluation and updating of the Curfew Ordinance.

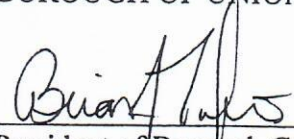
1. Accordingly, there shall be compiled and informally reported to Borough Council through effective channels (such as the normal monthly distribution by the Borough Secretary, to each Councilman, the Mayor and the Borough Solicitor, of noteworthy material) all exceptional cases hereunder of reasonable necessity, the notices of school and other activities, the Mayor's special permits and the Mayor's regulations hereinbefore authorized, and the Mayor's advisory opinions, for consideration by the appropriate committee and by Borough Council in further updating and continuing evaluation of the Curfew Ordinance.
2. For the same reasons, as well as for the implementation beyond these legal aspects of the basic purposes hereof, the Mayor and relevant committees of Borough Council, through their respective chairmen, in coordinated efforts, shall work with existing, and may organize, voluntary groups and shall stimulate volunteer leadership, in programs of research and of action dealing constructively on neighborhood and local bases with juvenile delinquency, and the prevention, control or containment thereof, and all its ramifications and with practical steps toward the good life, and a better life for minors 17 or less years of age, and with the working of the Curfew Ordinance, community-wise and in individual cases, as one much needed legal tool toward that end, as well as for continuing present protection of

minors and of other persons, and of property and other interests important to the welfare of the people of the Borough of Union City.

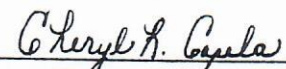
Section 10. ORDINANCE NO. 651, as amended, is hereby repealed.

ENACTED AND ORDAINED INTO AN ORDINANCE this 14th day of November, 1995.

BOROUGH OF UNION CITY

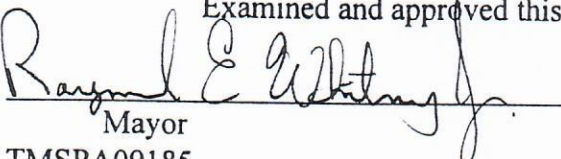


President of Borough Council

ATTEST: 

Borough Secretary/Treas.

Examined and approved this 14th day of November, 1995.



Mayor
TMSPA09185