

Chapter 120

CURFEW

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[HISTORY: Adopted by the Board of Supervisors of the Township of Fairview at time of adoption of Code (see Ch. 1, General Provisions, Art. I). Amendments noted where applicable.]

§ 120-1. Title.

This chapter shall be known and may be cited as the "Curfew Ordinance."

§ 120-2. Definitions.

A. For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meanings given herein:

MINOR — Any person under the age of 18 or, in equivalent phrasing often herein employed, any person 17 or fewer years of age.

PARENT — Any person having legal custody of a minor:

- (1) As a natural or adoptive parent;
- (2) As a legal guardian;
- (3) As a person who-stands in loco parentis; or
- (4) As a person to whom legal custody has been given by order of court.

REMAIN — To stay behind, to tarry and to stay unnecessarily upon the streets, including the congregating of groups (or of interacting minors) totaling four or more persons in which any minor involved would not be using the streets for ordinary or serious purposes, such as mere passage or going home. To implement that thought with additional precision and precaution, numerous exceptions are expressly defined in § 120-4; more and more exceptions become available with increasing years, as appropriate, in the interest of reasonable regulation.

STREET — A way or place, of whatever nature, open to the use of the public 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" also

applies, for curfew purposes, to ways the public is privileged to use over private property so long as the owner permits, including sidewalks and grass plots similarly open at the time to public use, and to parking areas of any type (residential, municipal or commercial) open to public use or from such street or any type of street. The term "street" applies irrespective of what it is called or formally named, whether alley, avenue, court, road or otherwise, or whether it is maintained by the Township and irrespective of whether it is open to the use of the public as a matter of right.

TIME OF NIGHT — Based upon the prevailing standard of time, whether Eastern standard time or Eastern daylight saving time, generally observed at that hour by the public in the Borough, prima facie the time then observed in the Township administrative offices and police station.

YEAR OF AGE — Continues from one birthday, such as the 17th, to (but not including the day of) the next, such as the 18th birthday, making it clear that 17 or fewer 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 eighteen-year-olds might be involved. Similarly, for example, 11 or fewer years of age means "under 12 years of age."

- B. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular, and words in the singular number include the plural. The word "shall" is always mandatory and not merely directory.

§ 120-3. Curfew for minors established.

It shall be unlawful for any person 17 or fewer years of age (under 18) to be or remain in or upon the streets within the Township of Fairview at night during the period ending at 6:00 a.m. and beginning:

- A. At 10:00 p.m. for minors 11 or fewer years of age.
- B. At 10:30 p.m. for minors 12 or 13 years of age.
- C. At 11:00 p.m. for minors 14 or more years of age.

§ 120-4. Exceptions.

- A. In the following exceptional cases, a minor on a street within the Township during the nocturnal hours for which § 120-3 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 this chapter:
 - (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. Such minor shall evidence the bona fides of such exercise by first delivering to the Fairview Township Police at the Township Municipal Building a written communication, signed by such minor and countersigned, if practicable, by a parent of such minor, with their home address and telephone number, addressed to the Police Chief of the Township specifying when, where and in what manner said minor will be on the streets at night (during hours when this chapter 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 Township 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, duly certified by the Chief of Police to be correct, with an appropriate notation of the time it was received and of the names and address of such parent and minor, shall be admissible evidence.
- (5) When the minor is on the sidewalk of the place where such minor resides or on 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 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 in such activities and striking a fair balance for any somewhat conflicting interests.
- (7) When authorized by special permit from the Police Chief 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 chapter, then recourse may be had to the Police Chief of the Township, either for a regulation as provided in Subsection A(8) or for a special permit as the circumstances warrant. Upon the Police Chief's finding of necessity for the use of the streets to the extent warranted by a written application (as judicially approved in *People v. Walton*, 161 P. 2d 498, 502 -503, Cal. App. 1945), signed by a minor and by a parent of such minor, if feasible, stating the name, age and address of such minor; the name, address and telephone number of a parent thereof; the height, weight, sex, color of eyes and hair and other physical characteristics of such minor; the necessity which requires such minor to remain upon the streets during the curfew hours otherwise applicable; and the street or route and the beginning and ending of the period of time involved by date and hour, the Police Chief may grant a permit, in writing, for the use by such minor of such streets at such hours as, in the Police Chief'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 Police Chief or, if unavailable, to the police officer authorized by the Police Chief to act on his behalf in an emergency at the police station.

- (8) When authorized by regulation issued by the Police Chief 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 Police Chief 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 30 minutes beyond the time for termination of such activity; and the reason for finding that such regulation is reasonably necessary and is consistent with the purposes of this chapter.
- (9) When the minor carries a certified card of employment, renewable each calendar month when the current facts so warrant, dated or reissued not more than 45 days previously, signed by the Police Chief, briefly identifying the minor, the addresses 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 Fairview Township.

B. Each of the foregoing exceptions and their several limitations, such as provisions for notification, are severable, as hereinafter provided but here reemphasized.

§ 120-5. Parental responsibility.

It shall be unlawful for a parent having a legal custody of a minor knowingly to permit or by inefficient control to allow such minor to be or remain upon any street within the Township under circumstances not constituting an exception to or otherwise beyond the scope of this chapter. 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, a fortiori, be no defense that a parent was completely indifferent to the activities or conduct or whereabouts of such minor.

§ 120-6. Police procedures.

A. A policeman of the Township, upon finding or having attention called to any minor on the streets in prima facie violation of this chapter, normally shall take the minor to the Township 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 police there and then on duty for 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 a birth certificate, a policeman on the street shall, in the first instance, use his best judgment in determining age.

- B. Police procedures shall constantly be refined in the light of experience and may provide, inter alia, that the policeman 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.
- C. In any event, such policeman shall, within 24 hours, file a written report with the Police Chief.
- D. When a parent, immediately called, has come to take charge of the minor and the appropriate information has been recorded, the minor shall be released to the custody of such parent. If the parent cannot be located or fails to take charge of the minor, then the minor shall be released to the juvenile authorities, except to the extent that, in accordance with police regulations, approved in advance by juvenile authorities, the minor may temporarily be entrusted to a relative, neighbor or other person who will, on behalf of a parent, assume the responsibility of caring for the minor pending the availability or arrival of a parent.
- E. In the case of a first violation by a minor, the Police Chief shall, by certified mail, send to a parent written notice of said violation, with a warning that any subsequent violation will result in full enforcement of this chapter, including enforcement of parental responsibility and of applicable penalties.

§ 120-7. Violations and 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 chapter, are hereby undergirded with the following legal sanctions:

- A. If, after the warning notice pursuant to § 120-6 of a first violation by a minor, a parent violates § 120-5 (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 \$200, and for each subsequent offense by a parent, the fine shall be increased by an additional \$200 (e.g., \$400 for the second, \$600 for the third offense). The Magisterial District Judge, upon finding a parent guilty, shall sentence the parent to pay such fine and the costs of prosecution and, upon refusal to pay such fine and costs, to be imprisoned for a period not exceeding 10 days.
- B. Any minor who shall violate any of the provisions of this chapter more than three times shall be reported by the Police Chief 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 Act, 42 Pa.C.S.A. § 6301 et seq., before the juvenile court for the treatment, supervision and rehabilitation of such minor.
- C. 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 this chapter cannot be made effective by the imposing of penalties under this section.

§ 120-8. Construal of provisions.

Severability is intended throughout and within the provisions of this chapter. 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 this chapter, in any and all other respects, shall not be affected thereby. From excess of caution, the Chairman of the Board of Supervisors 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 Township administration building, questioning as ambiguous, as having a potentially chilling effect on constitutional rights specifically invoked or 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. The Board of Supervisors does not intend a result that is absurd, impossible of execution or unreasonable. It is intended that this chapter be held inapplicable in such cases, if any, where its application would be unconstitutional. A constitutional construction is intended and shall be given. The Council does not intend to violate the Constitution of the Commonwealth of Pennsylvania or the Constitution of the United States of America, an ordinance similar in content having been upheld as constitutional by the federal courts in *Bykofsky v. Borough of Middletown*, 401 F. Supp. 1242 (M.D. Pa. 1975), *aff'd* 3 Cir. 1976, 535 F.2d 1245.