

CHAPTER 106: CURFEW

[HISTORY: Adopted by the Borough Council of the Borough of Newport 7-27-1979 by Ord. No. 216 (Ch. 6, Part 2, of the 1985 Code). Amendments noted where applicable.]

GENERAL REFERENCES

Loitering - See Ch. 138.

Noise - See Ch. 145.

§ 106-1. Short title.

This chapter shall be known and may be cited as “Newport Borough Curfew Ordinance.”

§ 106-2. Purpose; findings.

This chapter is prepared in accordance with prevailing community standards, regulations for the conduct of minors on the streets at night, effectively enforced, taught in the homes, internalized and adhered to for generations, all for the good of minors, for the furtherance of family responsibility, and for the public good, safety and welfare.

- A. Council finds that an effective curfew ordinance would meet a very real local need based, upon, among other things, the following: Newport is a residential community and a predominantly rural and farming area. After 9:00 p.m., most business establishments in the town are closed. This community sense of the proper time for cessation of outdoor activities by minors on the streets is reflected in the curfew hours declared by this chapter which takes into consideration also the danger hours for nocturnal crime and for accumulations of minors with potential risks incident to immaturity.
- B. Council finds that Newport Borough is not overcrowded. Commercial and public recreational facilities (one public park) are almost nonexistent and there is little or nothing for minors to do outdoors, but roam the streets, after the curfew hours which this chapter declares.
- C. Council further finds that parental responsibility for the whereabouts of children in this Borough is the norm, that legal sanctions to enforce such responsibility should demonstrate effectiveness, that as parental control increases, likelihood of juvenile delinquency

decreases, and that there is a clear and present need for the nocturnal curfew for minors which will achieve under local conditions the purposes hereinbefore stated.

§ 106-3. Definitions.

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

BOROUGH

The Borough of Newport, Perry County, Pennsylvania, with Borough offices at 231 Market Street, Newport, PA 17074.

MINOR

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

PARENT

Any person having legal custody of a minor:

- A. As a natural or adoptive parent;
- B. As a legal guardian;
- C. As a person who stands in loco parentis; or
- D. 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 congregation 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 § 106-5 so that this is not a mere prohibitory or presence-type curfew ordinance. More and more exceptions become available with increasing years and advance maturity as appropriate in the interest of reasonable regulation which is intended by the use of the meaningful phrase "be or remain" found constitutional in *Baker v. Borough of Steelton*, 17 Dauphin 17 (1912), a decision properly classified in *Thistlewood v. Trial Magistrate for Ocean City*, 204 A. 2d 688, 691 (Md. 1964) as relating to a curfew ordinance of the "remaining" type.

STREET

A way or place, of whatsoever nature, open to the use of the public as a matter of right for purpose 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 may be called or formally named, whether alley, avenue, court, road or otherwise.

TIME OF NIGHT

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 Borough 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 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 eighteen-year-olds might be involved. Similarly, for example, 11 or less years of age means "under 12 years of age."

§ 106-4. Curfew for minors.

[Amended 4-9-1985 by Ord. No. 238] It shall be unlawful for any person 17 or less years of age (under 18) to be or remain in or upon the streets within the Borough of Newport at night during the period ending at 6:00 a.m. and beginning:

- A. At 10:00 p.m. for minors 15 or less years of age.
- B. At midnight for minors 16 or more years of age.

§ 106-5. Exceptions.

[Amended 4-9-1985 by Ord. No. 238] In the following exceptional cases, a minor on a Borough street during the nocturnal hours for which § 106-4 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 a violation of this chapter:

- A. When accompanied by a parent of such minor.
- B. When accompanied by an adult age 21 or older authorized in writing 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.
- C. 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 Borough Police Station, 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 Mayor of the Borough, specifying when, where and 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.

- D. 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.
- E. 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 other officer on duty at the police station, thus encouraging (here as in other exceptional situations) conduct on the part of a minor involved in such activities and striking a fair balance for any somewhat conflicting interests.
- F. Special permit.

(1) When authorized, by special permit from the Mayor or Chief of Police, carried on the person of the minor thus authorized, as follows. When normal or necessary nighttime activities of a minor, particularly a minor well along the road to maturity, may be inadequately provided for by other provisions of this chapter, then recourse may be had to the Mayor or Chief of Police of the Borough, either for a regulation as provided in Subsection H or for a special permit as the circumstances warrant. Upon the Mayor's or Chief of Police 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:

- (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 such 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 or Chief of Police may grant a permit in writing for the use by such minor of such streets at such hours as in the Mayor's or Chief of Police's opinion may reasonably be necessary.

(2) 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 Chief of Police or if unavailable to the police officer authorized by the Mayor or Chief of Police to act on his behalf in an emergency, at the police station.

- G. When authorized, by regulation issued by the Mayor or Chief of Police, in other similar cases of reasonable necessity, similarly handled but adapted to normal or necessary nighttime activities or 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 30 minutes beyond the time for termination for such activity, and the reason for finding that such regulation is reasonably necessary and is consistent with the public interest and the purposes of this chapter.
- H. 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 Mayor or Chief of Police and briefly identifying the minor, the address of his home and of his hours of employment.
- I. 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 Newport, and also exempts interstate travel beginning or ending in Newport.
- J. When the minor is 17 years of age, and if and when the Mayor shall have determined, for 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 interest of said minors and of the Borough, finding the facts as to a sufficient degree of maturity of those thus within one year of adulthood and finding that this chapter should be relaxed as an incentive to and recognition of approaching maturity, 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 thereof, may take appropriate action excepting designated minors, minors in a defined group or area, or all minors (as the current facts may warrant) 17 years of age at that date or attaining 17 years of age during the period that such formal rule is and remains in effect.
- K. Each of the foregoing exceptions, and their several limitations, such as provisions for notification, are severable, as hereinafter provided but here re-emphasized; 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, neighborhood spokespersons, parents, officers, and persons in authority concerned positively with minors as well as with juvenile delinquency.

§ 106-6. 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, 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 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.

§ 106-7. Police procedures.

A policeman of the Borough, 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 Borough Police Station, where a parent shall be immediately 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 then and there on duty for accurate, effective, fair, impartial and uniform enforcement, and recording, thus making available 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 streets shall in the first instance use his best judgment in determining age.

- A. Police procedures shall constantly be refined in the light of the 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 be readily ascertained or are known.
- B. In any event, such policeman shall within 24 hours file a written report with the Chief of Police.
- C. 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 the parent.

- D. In the case of a first violation by a minor, the Chief of Police 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.

§ 106-8. 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 Curfew Ordinance, are hereby undergirded with the following legal sanctions.

- A. If, after the warning notice pursuant to § 106-7 of a first violation by a minor, a parent violates § 106-6 (in connection with a second violation by said minor), this shall be treated as a first offense by the parent. For such parental offense, a parent shall be fined up to \$600. 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 in the jail of Perry County for a period not exceeding 30 days.[Amended 1-8-2013 by Ord. No. 348]
- B. Any minor who shall violate any of the provisions of the Curfew Ordinance more than three times shall be reported by the Mayor or Chief of Police 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 the Curfew Ordinance cannot be made effective by the imposition of penalties under this § 106-8.

§ 106-9. Construal of provisions.

- A. Severability is intended throughout and within the provisions of this Curfew Ordinance. If any provision, including, inter alia, any exception, part, phrase or term, or the application thereof to any person or circumstances shall not be affected thereby and the validity of this Curfew Ordinance in any and all respects shall not be affected thereby. From excess of caution, the

Mayor is authorized to give an advisory opinion, 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 opinion shall be in response to good faith, signed letters addressed to him at the Borough Building, questioning as:

(1) Ambiguous;

(2) As having a potentially chilling effect on constitutional rights specifically invoked; or

(3) As otherwise invalid, in all three categories with respect to proposed conduct definitely described.

- B. This administrative remedy must be exhausted prior to presenting to any court a question in any of said 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.

§ 106-10. Continuing evaluation.

Borough Council will continue its evaluation and updating of the Curfew Ordinance.