

CURFEW ORDINANCE FOR THE BOROUGH OF LANESBORO SUSQUEHANNA COUNTY, PENNSYLVANIA

Original Adoption May, 1978

Revised and readopted April xx, 2011

An Ordinance of the Borough of Lanesboro, County of Susquehanna, Pennsylvania establishing a curfew for minors, regulating the streets and parks during the nocturnal hours, and providing for related matters such as permits, regulations, parental responsibilities, police procedures, penalties, construction, effective date, and the repeal of conflicting Ordinances.

Be it ordained and enacted and it is hereby Ordained and Enacted by and with the Authority of the Council of the Borough of Lanesboro, County of Susquehanna, Pennsylvania, that:

Section 1 – Short Title

This Ordinance shall be known and may be cited as the “CURFEW ORDINACE”.

Section 2 – Purposes

The Borough Council finds that a need exists for the control of minors and the regulation of the use of the streets and parks of the Borough by such minors as herein prescribed for the public good, safety and welfare of the residents of the Borough of Lanesboro.

Section 3 – Definitions

For the Purpose of the Curfew Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the text, words used in the present tense shall include the future, words in the plural include the singular and words in the singular shall include the plural. The word SHALL is always mandatory and merely directory.

- a) Borough is the Borough of Lanesboro, Susquehanna County, Pennsylvania
- b) Minor is any person under the age of eighteen (18) years or the equivalent phrasing often herein employed – Seventeen (17) years or less in age.
- c) Parent is any person having legal custody of a minor as: (i) a natural or adoptive parent; (ii) a legal guardian; (iii) a person who stands in loco parentis; or (iv) a person to whom legal custody has been given by order of the Courts.

- d) Remain means to stay behind, to tarry and to stay unnecessarily upon the street or parks, including the congregating of groups (of or interacting minors) totaling two (was four) or more persons in which any minor involved would not be using the streets or parks for ordinary or serious purposes in such as mere passage or going home.

((The meaningful phrase being “Be or remain” as found Constitutional in Baker vs. Borough of Steelton, 17 Dauph. 17 (1912), and a decision properly classified in Thistlewood vs. Trial Magistrate for Ocean City, 204 A. 2d 688, 691 (Md 1964) as relating to a Curfew Ordinance of the “remaining type.”))

- e) Street is a way or place, of whatever 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 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 within the legal right of way of a street. The term street applies irrespective of what it is called or formally named whether alley, avenue, court, road, or otherwise.

- f) Park is a place, of whatever nature, open to the use of the public as a matter of right for purposes of relaxation and / or health related activities. The term park includes grass areas, playgrounds, athletic areas, walking paths, and any other feature within the park boundary. The term park applies irrespective of what it is called or formally named whether park, field, path, or otherwise.

- g) Time of Night referred to herein is based upon the prevailing standard of time whether Eastern Standard Time or Eastern Daylight Savings Time, generally observed at that hour by the Public in the Borough, Prima Facie the time then observed in the Borough’s Administrative Offices and Police Station.

- h) Year of Age continues from one birthday, such as the seventeenth to, but not including, the day of the next birthday, such as the eighteenth, making it clear that seventeen years or less of age is equivalent to the phrase “under eighteen years of age”.

Section 4 – Curfew for Minors

It shall be unlawful for any person seventeen or less years of age (under eighteen) to be or remain in or upon the streets or parks within the Borough at night during the period ending at 6:00 (six) AM and beginning:

- a) At 10:00 (ten) PM for minors eleven or less years of age;
- b) At 10:30 (ten thirty) PM for minors twelve or thirteen years of age;

- c) At 11:00 (eleven) PM for minors fourteen or more years of age.

Section 5 – Exceptions

A minor shall not be considered to be in violation of this Ordinance in the following exceptional cases:

- a) When accompanied by the parent of said minor;
- b) When accompanied by an adult authorized by the parent of such minor to take said parent's place in accompanying said minor for a designated period of time and purpose with a specified period of time;
- c) When exercising First Amendment Rights protected by the Constitution of the United States, 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 the Mayor of the Borough or his designated representative a written communication signed by such minor and where practicable counter-signed by a parent of such minor, with their home address and telephone number, specifying when, where and in what manner said minor will be on the streets **or parks** during hours when the Curfew Ordinance would otherwise be applicable to such minor, in the exercise of the a First Amendment Right specified in such communication.
- d) In cases of reasonable necessity but only after each such minor's parent has communicated to the Borough Police Department the facts establishing such reasonable necessity relating to specific streets at a specific time for a definite 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 the appropriate notation of the time it was received and the names and addresses of such minor and parents shall be admissible as evidence.
- e) When the Minor is upon the sidewalk of the place where such minors resides or on the sidewalk of either next door neighbor not communicating an objection to a police officer.
- f) When returning home by a direct route and within thirty minutes from 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.
- g) When authorized by special permit from the Mayor carried on the person of the minor thus authorized, as follows. When normal or necessary night-time activities of a minor may be inadequately provided for by the terms of this Ordinance, then recourse may be had to the Mayor of the Borough for a special regulation under the terms of subsection (h) or through application for a special permit. Upon the Mayor's finding of necessity for the use of the streets **or parks** to the extent warranted by the Permit Application (as judicially approved in *People vs. Walton*, 161 P. 2d 498, 502-503, Cal. App. (1945), signed by the minor and parent of such minor, if feasible, stating: (i) the name, age, and address of such minor; (ii) the name, address, and

telephone number of a parent thereof; (iii) the height, weight, sex, color of hair and eyes, and other physical characteristics of such minor; (iv) the reason which requires such minor to remain upon the streets of the Borough during curfew hours; (v) the street or route to be travelled by such minor; and (vi) the beginning and ending time of the period involved as to date and hour. Upon receipt of this application with the preceding information, the Mayor may grant a permit in writing for use by such minor of specific streets or parks at specific hours as in the Mayor's opinion may be reasonably necessary.

- h) The Mayor may upon application issue group permits, Provided: (i) the permit is for a limited period of time; (ii) the permit is issued sufficiently in advance to permit appropriate publicity through the news media, the schools and other agencies; (iii) such permits define the activity & the scope of the use of the streets or parks permitted; (iv) the permit states that period of time allowed, not to extend more than thirty minutes beyond the termination of the special activity; and (v) such special permit includes a statement by the Mayor stating the reason/s for finding that such permit is reasonably necessary and is consistent with the public interest and the purposes of this Curfew Ordinance.
- i) When the minor carries a certified card of employment, renewable monthly, dated or re-issued not more than forty five previously, signed by the Chief of Police, and briefly identifying the minor, the address of his home, place of employment, and the hours of his employment.
- j) When the minor is, with parental consent, in a motor vehicle. This contemplates normal travel and clearly exempts all interstate travel through the Borough and all interstate travel beginning or terminating in the Borough.
- k) Each of the foregoing exceptions are severable, as hereinafter provided as are all exceptions that may be adopted subsequently as amendments to this Ordinance

Section 6 – Parental Responsibility

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

Section 7 – Police Procedures

A Police Officer of the Borough, upon finding or having attention called to any minor on the streets or parks in prima facie violation of the Curfew Ordinance, shall normally take the minor to the

Borough Police Station, where a parent shall be immediately notified to come for such minor, whereupon the shall be questioned. This is intended to ascertain pertinent and relevant facts, under Constitutional safeguards, and to centralize responsibilities of the office on duty for accurate, effective, fair, impartial, and uniform enforcement and recording. In the absence of convincing proof of age, such as a birth certificate, a Police Officer on the street shall in the first instance use his best judgment and experience in ascertaining the age of such minor.

- a) Police Procedures shall be constantly redefined in the light of experience and may provide, inter alia, that a policeman may deliver to a parent thereof a minor under appropriate circumstances, e.g. a minor of tender age, near home, whose identity and address may be readily ascertained or are known.
- b) In any event such Police Officer shall within twenty four hours file a written report with the Mayor and Chief of Police stating the circumstances, action, results and disposition of each case.
- c) When a parent has been immediately called and 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 custody of the minor, then the minor shall be released to the juvenile authorities, except to the extent that in accordance with Departmental regulation, previously approved by the juvenile authorities, the minor may be temporarily entrusted to a relative, neighbor or other person who will on behalf of the parent assume the responsibility of caring for the minor of caring for the minor pending the arrival or availability of the parent.
- d) In the case of a first violation by a minor, the Chief of Police shall, by Certified Mail, send to the parent written notice of said violation with a warning that subsequent violation will result in full enforcement of the provisions of the Curfew Ordinance, including the sections on Parental Responsibilities and Penalties.

Section 8 – Penalties

- a) If, after a Warning Notice issued pursuant to the Authority of Section 7 of this Ordinance, a parent violates Section 6, by knowingly permitting or allowing such minor to be or remain on the streets or parks of the Borough in violation of this Ordinance, this shall be considered to be the first violation of the Ordinance by the Parent. For such first parental violation, a parent shall be fined \$50.00 (fifty dollars) (was \$25) and for each subsequent violation by a parent the fine shall be increased by an additional \$25.00 (twenty five dollars). The District Magistrate, upon finding a parent guilty, shall sentence the parent to pay such fine and the costs of prosecution and upon refusal to pay such fines and costs shall sentence said parent to be imprisoned in the Susquehanna County Jail for a period not exceeding ten (10) days.

- b) Any minor who shall violate any of the provisions of this Curfew Ordinance more than three times shall be reported by the Mayor to a society or organization whose purpose it is to take charge of incorrigibles and delinquents, and proceeding shall then be undertaken by the terms of the Juvenile Act, 11 P.S. Sect. 50-101 et. Seq., before the Juvenile Court for the treatment, supervision and rehabilitation of said minor.
- c) A like procedure before the Juvenile Authorities shall be followed in any case where the imposition of a fine or fines upon a parent shall not be effective, or where for any reason the provisions of the Curfew Ordinance cannot be made effectively by the imposition of penalties under this Section 8.

Section 9 – Construction

Severability is intended throughout and within the provisions of the Curfew Ordinance. If any provision and inter alia any exception, part, phrase or term of the application thereof to any person or circumstance is found to be invalid, the application to other persons and circumstances shall not be affected thereby and the validity of the Curfew Ordinance in any and all other respects shall not be affected thereby.

A constitutional construction is intended in all cases and shall be given; Council does not intend to violate the provisions of the Constitution of the United States of America or the Constitution of the Pennsylvania.

Section 10 – Repealer

All Ordinances or parts of Ordinances incompatible with the provisions of this Ordinance are and the same are hereby repealed.

Section 11 – Effective Date

This Curfew Ordinance shall take effect immediately upon its passage and approval.

Adopted this _____th day of _____, 2011, by the Borough of Lanesboro, Susquehanna County, Pennsylvania.

(SEAL)

ATTEST:

Todd M. Glover, Council President

E. Gail Hanrahan, Secretary/Treasurer

Christopher J. Maby, Mayor