

SOUTH LONDONDERRY TOWNSHIP

ORDINANCE NO. 42

Curfew Ordinance for minors, regulating use of streets during nocturnal hours, and providing for related matters such as permits, regulations and other exceptions, parental responsibilities, police procedures, penalties, construction and advisory opinions and continuing evaluation as well as implementation through voluntary research and local action for the prevention of juvenile delinquency.

BE IT ORDAINED by the Board of Supervisors, South Londonderry Township, Lebanon County, Pennsylvania, and it is hereby ordained by authority of the same:

Section 1: Short Title. This ordinance shall be known and may be cited as Curfew Ordinance.

Section 2: Purposes and Findings. The South Londonderry Township Board of Supervisors finds that its community is principally rural in character with a few small population centers. In this stable community the prevailing standards in effect for generations teach parental responsibility for the whereabouts of children. It is the norm that parents for the good of minors and the furtherance of family responsibility have adopted a community sense of the proper time for cessation of outdoor activities by minors on the streets. The Board of Supervisors finds that South Londonderry Township is not overcrowded and there is available adequate indoor living space to permit minors to healthfully occupy their time and that there is little or nothing for minors to do outdoors but roam the streets after the curfew hours which this ordinance declares.

The purpose of this ordinance is to meet a very real local need and in accordance with the prevailing community standards to regulate the conduct of minors on streets, at night for the public good, safety and welfare. The curfew hours declared by this ordinance take into consideration the danger hours for nocturnal crime and the accumulation of minors with potential risks incident to immaturity. The sanctions of this ordinance to enforce parental responsibility for the whereabouts of children, it is believed, have been proven effective in other communities to increase parental control and as a direct result decreased the likelihood of juvenile delinquency.

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 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.

- (a) BOARD is the South Londonderry Township Board of Supervisors.
- (b) TOWNSHIP is South Londonderry Township, Lebanon County, Pennsylvania, with administrative offices at Center & Market Streets, Campbelltown, Pennsylvania 17010.
- (c) MINOR is any person under the age of eighteen (18), or in equivalent phrasing often herein employed, any person seventeen (17) or less years of age.
- (d) PARENT is any person having legal custody of a minor (i) as a natural or adoptive parent (ii) as a legal guardian, (iii) as a person who stands in loco parentis of (iv) as a person to whom legal custody has been given by order of Court.

- (e) REMAIN means to stay behind, to tarry and to stay unnecessarily upon the streets, including the congregating of groups (or of interacting minors) totalling four (4) 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 Section 5. More and more exceptions become available with increasing years, as appropriate in the interest of reasonable regulation which is intended by use of the meaningful phrase "be or remain" found constitutional in Baker v. Borough of Steelton, 17 Dauph. 17 (1912), a decision PROPERLY CLASSIFIED IN Thistlewood v. Trial Magistrate for Ocean City, 204A 2d 688, 691 (Md. 1964) as relating to a Curfew Ordinance of the remaining type.
- (f) STREET is 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 be called or formally named, whether alley, avenue, court, road or otherwise.
- (g) 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 that hour by the public in the Township prima facie the time then observed in the Township 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, such as the eighteenth birthday, making it clear that seventeen (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 (18) years olds might be involved.

Section 4: Curfew for minors. It shall be unlawful for any person seventeen (17) or less years of age (under 18) to be or remain in or upon the streets within the Township at night during the period beginning at 11:30 o'clock P.M. and ending at 6:00 o'clock A.M.

Section 5: Exceptions. In the following exceptional cases, a minor on a Township street during the nocturnal hours for which section 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 in violation of the Curfew Ordinance.

- (a) When accompanied by a parent of such minor.
- (b) 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 or 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 bona fides of such exercise by first delivering, to the Township Administrative Office at the Township Municipal Building, Center & Market Streets, Campbelltown, where and by whom high priority messages to the Board are regularly received, 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 Board of Supervisors, 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.

- (d) In case of reasonable necessity but only after such minor's parent has communicated to the Township Chief of Police or Township Secretary, 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.
- (e) 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.
- (f) 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 (hereas in other exceptional situations) conduct on the part of minors involved in such activities and striking a fair balance for any somewhat conflicting interests.
- (g) When authorized by special permit from the Chief of Police or Township Secretary carried on the person of the minor thus authorized, as follows. When necessary night-time activities of a minor, may be inadequately provided for by other provisions of this ordinance, then recourse may be had to the Chief of Police or Township Secretary, either for a regulation as provided in subsection (h) or for a special permit as the circumstances warrant. Upon the Chief of Police or Township Secretary'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 (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 Chief of Police or Township Secretary may grant a permit in writing for the use of such minor of such streets at such hours as in the Chief of Police or Township Secretary'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 Chief of Police, Township Secretary, or if unavailable to the police officer authorized to act on their behalf in an emergency, at the police station.
- (h) When authorized, by regulation issued by the Chief of Police or Township Secretary, in other similar cases of reasonable necessity, similarly handled but adapted to necessary night-time activities or more minors than can readily be dealt with on an individual special permit basis. Normally, such regulation by the Chief of Police or Township Secretary 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, 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 and is consistent with the purposes of this Curfew Ordinance.

- (i) 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 forty five (45) days previously, signed by the Chief of Police and briefly identifying the minor, the addresses of his home and of his place of employment and his hours of employment.
- (j) 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 Township. This also exempts interstate travel beginning or ending in the Township.
- (k) When the minor is seventeen (17) years of age, if and when the Board shall have determined by formal rule first reported at public meeting, 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 and of the Township, then the Board by such formal rule, covering a period of time designated therein or until rescision thereof not exceeding one (1) 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) seventeen (17) years of age at that date or attaining seventeen (17) years of age during the period that such formal rule is and remains in effect.
- (l) 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, precinct and neighborhood spokesmen, parents, officers and persons in authority concerned positively with minors as well as with juvenile delinquency.

Section 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 Township 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, a fortiori, be no defense that a parent was completely indifferent to the activities or conduct or whereabouts of such minor.

Section 7: Police procedures. A policeman of the Township 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 Township Police Station, where a parent shall immediately be notified to come for such minor, whereupon they shall be interviewed. This is intended to permit ascertainment, under constitutional safeguards, or relevant facts, and to centralize responsibility in the Police Officer 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 acces 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.

- (a) 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 a tender age near home whose identity and address may readily be ascertained or are known.
- (b) In any event such policemen 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 in such case, and in the filing of such report within twenty four (24) hours.
- (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 a 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 the Curfew Ordinance, including enforcement of parental responsibility and of applicable penalties.

Section 8: Penalties. Prevailing community standards and the real internalization thereof or interpersonal sanctions therefore 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 section 7 of a first violation by a minor, a parent violates section 6 (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 \$25.00 and for each subsequent offense, by a parent, the fine shall be increased by an additional \$25.00, e.g. \$50.00 for the second, \$75.00 for the third offense. The District Justice, 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 Lebanon County, for a period not exceeding ten (10) days.
- (b) Any minor who shall violate any of the provisions of the curfew ordinance more than three (3) times shall be reported by the 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 "Judicial Code" of 1978, before the 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 reason the provisions of the Curfew Ordinance cannot be made effective by the imposing of penalties under this Section 8.

Section 9: 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 Chief of Police 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 opinion shall be in response to good faith, signed letters addressed to him at the Township Municipal Building, questioning as (a) ambiguous, (b) as having a potentially chilling effect on constitutional rights specifically invoked, or (c) as other wise 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 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. The Board does not intend to violate the Constitution of the Commonwealth of Pennsylvania or the Constitution of the United States of America.

Section 10: Continuing Evaluation. The Board of Supervisors continue its evaluation and updating of the Curfew Ordinance.

- (a) Accordingly, there shall be compiled and informally reported to The Board through effective channels (such as the normal monthly distribution by the Township Secretary, to each, the Chief of Police and the Township Solicitor, of noteworthy material) all exceptional cases hereunder of reasonable necessity, the notices of school and other activities, the special permits and the regulations hereinbefore authorized, and the Chief of Police advisory opinions, for consideration by the Board of Supervisors in further updating and continuing evaluation of the Curfew Ordinance.
- (b) For the same reasons, as well as for the implementation beyond these legal aspects of the basic purposes hereof, the Chief of Police 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, in all its ramifications and with practicable steps toward the good life, and a better life, for minors seventeen (17) or less years of age, and with the working of a 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 Township of South Londonderry.

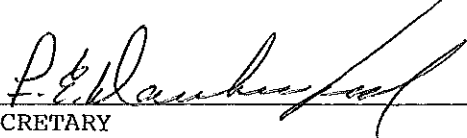
Section 11: Repealer. All ordinances and parts of ordinances inconsistent herewith are repealed.

Section 12: Effective Date. This ordinance shall become effective five (5) days after adoption.

ENACTED AND ORDAINED THIS 16th DAY OF June, 1982.

ATTEST:

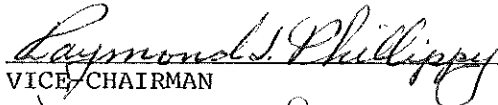
BOARD OF SUPERVISORS OF
SOUTH LONDONDERRY TOWNSHIP



SECRETARY



CHAIRMAN



VICE-CHAIRMAN

