

Chapter 6

Conduct

Part 1

Nighttime Curfew for Minors

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Part 1**Nighttime Curfew for Minors****§6-101. Short Title.**

This Part shall be known and may be cited as “Curfew Ordinance.”
(*Ord. 262, 7/6/1977, §3*)

§6-102. Purpose and Findings.

The Borough Council has found that the number and seriousness of crimes committed by minors against persons and property within the Borough is increasing and has created a menace to the preservation of public peace, safety, health, moral and welfare. The purpose of this Part is to prescribe, in accordance with prevailing community standards, regulations for the conduct of minors on streets at night for the good of minors, for the furtherance of family responsibility, and for the public good, safety and welfare.

(*Ord. 262, 7/6/1977, §2*)

§6-103. Definitions.

For the purposes of this Part, 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.

Borough—the Borough of Millbourne, Delaware County, Pennsylvania with Borough and Police administrative offices located at 11 Park Avenue, Millbourne, Pennsylvania.

Establishment—any privately owned place of business carried on for a profit or any place of amusement or entertainment to which the public is invited.

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

Operator—any individual, firm, association, partnership, or corporation operating, managing or conducting any establishment, and whenever used in any clause prescribing a penalty the term “operator” as applied to associations or partnerships shall include the members or partners thereof and as applied to corporations shall include the officers thereof.

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 §6-105 so that this is not a mere prohibitory or presence type curfew ordinance. More and more exceptions become available with increasing years and advancing maturity 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*, 236 Md. 548, 204 A.2d 688, 691 (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 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 or 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 formally named, whether alley, avenue, court, road or otherwise.

Time of night—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 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 18 year olds might be involved.

(Ord. 262, 7/6/1977, §3)

§6-104. Curfew for Minors.

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 Millbourne Borough at night during the period ending at 5 a.m. and beginning:

- A. At 10:30 p.m. during the days Sunday through Thursday inclusive.
- B. At 12 a.m. during the days Friday, and Saturday.

(Ord. 262, 7/6/1977, §4)

§6-105. Exceptions.

In the following exceptional cases a minor on a Borough street during the nocturnal hours for which §6-104 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 Part.

- 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 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 Mayor, at the Borough Municipal Building, 11 Park Avenue, Millbourne, 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 in what manner said minor will be on the streets at night (during the hours when this Part 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 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, duly certified by the Mayor 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 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 Mayor or the officer assigned by him on duty at the police station, thus encouraging (here as in other exceptional situation) 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 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 other provisions of this Part, then recourse may be had to the Mayor of the Borough, either for a regulation as provided in paragraph .H 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 (as judicially approved in *People v. Walton*, 70 Cal.App.2d Supp. 862, 171 P.2d 498, 502-503, (1945)), signed by a minor and by a parent of such minor if feasible stating (1) the name, age and address of such minor, (2) the name, address and telephone number of a parent thereof, (3) the height, weight, sex, color of eyes and hair and other physical characteristics of such minor, (4) the necessity which requires such minor to remain upon the streets during the curfew hours otherwise applicable, and (5) 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.

H. When authorized, by regulation issued by the Mayor, in other similar cases of reasonable necessity, similarly handled but adapted to necessary night-time

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 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 Part.

I. 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 45 days previously, signed by the Mayor and briefly identifying the minor, the addresses of his home and of his 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 travel beginning or ending in Millbourne Borough.

K. When the minor is 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 and of the Borough, finding that this Part should be relaxed, then the Mayor by such formal rule, covering a period of time designated therein or until rescission thereof not exceeding 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) 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.

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.

(Ord. 262, 7/6/1977, §5)

§6-106. 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 Part. 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.

(Ord. 262, 7/6/1977, §6)

§6-107. 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 Part, 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 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.

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 tender age near home whose identity and address may readily be ascertained or are known.

B. In any event such policeman shall within 24 hours file a written report with the Mayor, 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 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.

(Ord. 262, 7/6/1977, §7)

§6-108. Unlawful Conduct of Owners or Operators of Establishments.

No operator of an establishment or their agents or employees shall knowingly permit any minor to remain upon the premises of said establishment between the hours of 10:30 p.m. and 5 a.m. of the following day, except that on Fridays and Saturdays, the hours shall be from 12 midnight to 5 a.m.

(Ord. 262, 7/6/1977, §8)

§6-109. Violations and Penalties.

1. Whenever a minor shall first violate the terms hereof, it shall also be treated as a first offense by the parent. For such first parental offense a parent, upon conviction thereof in an action brought before a magisterial district judge in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay a fine of not less than \$25 nor more than \$1,000 plus costs; for a second subsequent offense by a parent the fine shall be increased to not

less than \$50 nor more than \$1,000 plus costs; for a third subsequent offense and for any succeeding offenses thereafter, the fine shall be increased to not less than \$100 nor more than \$1,000 plus costs for each succeeding offense and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 90 days. Each day that a violation of this Part continues or each Section of this Part which shall be found to have been violated shall constitute a separate offense. [Ord. 447]

2. Any minor who shall violate any of the provisions of this Part 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 proceedings shall then be taken under the Juvenile Act, 11 P.S. §60-101 *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 this Part cannot be made effective by the imposing of penalties under this Section.

4. Any operator of an establishment and any agent or employee of any operator who shall violate the provisions of this Part, upon conviction thereof in an action brought before a magisterial district judge in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay a fine of not more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 90 days. Each day that a violation of this Part continues or each Section of this Part which shall be found to have been violated shall constitute a separate offense. [Ord. 447]

(Ord. 262, 7/6/1977, §9; amended by Ord. 274, 1/3/1978, §33-8; and by Ord. 447, 5/20/2015)

§6-110. Construction.

Severability is intended throughout and within the provisions of this Part. 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 Part 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 Part 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 this Part 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.

(Ord. 262, 7/6/1977, §10)

§6-111. Continuing Evaluation.

Borough Council will continue its evaluation and updating of this Part.

A. Accordingly, there shall be compiled and informally reported to Borough Council through effective channels by such Borough administrative personnel as designated by the Mayor 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 this Part.

B. 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, in all its ramifications and with practicable steps toward the good life, and a better life, for minors 17 or less years of age, and with the working of this Part, 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 Millbourne.

(Ord. 262, 7/6/1977, §11)

