

COUNCIL WORKSHOP ITEM

ITEM: Revisions to the Curfew Ordinance
DATE: March 24, 2004
PREPARED BY: Enza Petrarca, Village Attorney, and Ann Marie Perez, Staff Attorney
PURPOSE: Amending the Ordinance to Comply with Recent Federal Court Ruling

DISCUSSION:

On January 22, 2004, in the case of *Hodgkins v. State of Indiana, et al.*, the Seventh Circuit Court of Appeals ruled that the curfew law in Indiana was unconstitutional in that it violated First Amendment rights. Based upon the Legal Department's review of the Indiana law and our own ordinance on the subject, staff thought it best to amend our ordinance prior to a Constitutional challenge since our ordinance closely followed the Indiana law in form and substance.

The changes to our ordinance are the result of the federal court decision, which requires us to include the rights guaranteed by the First Amendment to the Constitution to all citizens, regardless of age. With these changes, police officers are mandated to inquire of the juvenile the reason for his/her being out after curfew and determine whether any of the defenses apply. A ticket will issue only if the officer reasonably believes that a violation occurred and that none of the defenses apply.

ATTACHMENT:

An Ordinance Amending Curfew Violations

RECOMMENDATION:

Place this matter on the April 13th Workshop for Council consideration.

ORDINANCE NO. _____

AN ORDINANCE AMENDING CURFEW VIOLATIONS

BE IT ORDAINED by the Village Council of the Village of Downers Grove in DuPage County, Illinois, as follows: (Additions are indicated by ~~shading~~/underline; deletions by ~~strikeout~~):

Section 1. That Section 15.2. is hereby amended to read as follows:

15.2. Curfew.

(a) It shall be unlawful for a person less than seventeen (17) years of age (hereinafter "minor") to be present at or upon any public assembly, building, place, street or highway at the following times; ~~unless accompanied and supervised by a parent, legal guardian or other companion at least eighteen years of age approved by a parent or legal guardian or unless engaged in or traveling to or from a business or occupation which the laws of the state authorize a person less than seventeen years of age to perform:~~

- (1) Between 12:01 a.m. and 6:00 a.m. Saturday;
- (2) Between 12:01 a.m. and 6:00 a.m. Sunday; and
- (3) Between 11:00 p.m. on Sunday to Thursday, inclusive, and 6:00 a.m. on the following

day.

(b) It is a defense to a violation of 15.2(a) that the minor engaged in the prohibited conduct while:

(1) accompanied and supervised by the minor's parent, legal guardian, custodian, sibling, stepbrother or stepsister at least eighteen (18) years of age;

(2) accompanied and supervised by an adult at least twenty-one (21) years of age approved by the minor's parent, guardian or custodian;

(3) participating in, going to, or immediately returning from:

(i) employment which the laws of this State authorize a person less than seventeen (17) years of age to perform;

(ii) an official school recreational activity;

(iii) a religious event;

(iv) an emergency involving the protection of a person or property from an imminent threat of serious bodily injury or substantial damage;

(v) an activity involving the exercise of the minor's rights protected under the First Amendment to the United States Constitution or Article 1, Sections 3, 4, and 5 of the Constitution of the State of Illinois, such as the free exercise of religion, freedom of speech and the right of assembly;

(vi) an activity conducted by a non-profit or governmental entity that provides recreation, education, training or other care under the supervision of one (1) or more persons over seventeen (17) years of age;

(4) married or had been married or is an emancipated minor under the Emancipation of Mature Minors Act, as amended.

A citation for violation of subparagraph (a) of this section may be issued by a police officer only if he reasonably believes that a violation occurred and none of the defenses enumerated in subparagraph (b) apply.

(bc) It shall be unlawful for a parent, legal guardian or other person to knowingly permit or by insufficient control allow a minor person in his custody or control to violate subparagraph (a) of this section and none of the defenses enumerated in subparagraph (b) hereof apply. (Ord. No. 2877, § 1.)

Section #2. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are

Curfew

hereby repealed.

Section #3. That this ordinance shall be in full force and effect from and after its passage and publication in the manner provided by law.

Mayor

Passed:

Published:

Attest:

Village Clerk