

## **Chapter 78**

### **CURFEW**

**[HISTORY: Adopted by the Board of Supervisors of the Township of West Earl 12-18-1995 as Ord. No. 111. (This ordinance also repealed former Ch. 78, Curfew, adopted 6-26-1970, as amended.) Amendments noted where applicable.]**

#### **§ 78-1. Title.**

This chapter shall be known and may be cited as the "West Earl Township Curfew Ordinance."

#### **§ 78-2. Purposes and findings.**

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

- A. The Board of Supervisors finds that a curfew meets a very real local need, and in adjacent municipalities curfew ordinances have been over the years a significant factor in minimizing juvenile delinquency. The Board of Supervisors institutes the curfew in the township in light of West Earl Township's local situation and facts including the following. It is a residential and rural community in an area traditionally classified as Pennsylvania Dutch. 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 of nocturnal crime and for accumulations of minors with potential risks incident to immaturity.
- B. The Board of Supervisors further finds that West Earl Township is a stable family community. Parental responsibility for the whereabouts of children is the norm. Legal sanctions to enforce such parental responsibility have had a demonstrated effectiveness over the years. As parental control increases, likelihood of juvenile delinquency decreases. There is a continuing need for the nocturnal curfew for minors which has achieved and will continue to achieve under local conditions the purposes hereinbefore stated.

#### **§ 78-3. Definitions; word usage.**

- A. For the purposes of this chapter, the following terms, phrases, words, and their derivations shall have the meanings 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.

B. As used in this chapter, the following terms shall have the meanings indicated:

MINOR — Any person under the age of eighteen (18), or, in equivalent phrasing often herein employed, any person seventeen (17) or less years of age.

PARENT — Any person having legal custody of a minor as a natural or adoptive parent, as a legal guardian, as a person at least eighteen (18) years of age and authorized by a parent to have care and custody of the minor or 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) totalling four (4) or more persons in which any minor involved would not be using the streets for ordinary or serious purposes such as passage or going home. To implement that thought with additional precision and precaution, numerous exceptions are expressly defined in § 78-5 so that this is not a mere prohibitory or presence-type curfew ordinance.

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 is called or formally named, whether alley, avenue, court, road or otherwise.

TIME OF NIGHT — Reference 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.

TOWNSHIP — The Township of West Earl, Lancaster County, Pennsylvania, with administrative offices at 157 West Metzler Road, Brownstown, Pennsylvania 17508.

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 seventeen (17) or less years of age is herein treated as equivalent to the phrase "under eighteen (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.

**§ 78-4. Curfew for minors.**

It shall be unlawful for any person seventeen (17) or less years of age to be or remain in or upon the streets within the township at night during the period ending at 6:00 a.m. and beginning:

- A. At 10:00 p.m. on Sundays through Thursdays; and
- B. At 11:59 p.m. on Fridays and Saturdays.

**§ 78-5. Exceptions.**

A minor on a township street during the nocturnal hours for which § 78-4 is intended to provide the maximum limits of regulation shall not violate this chapter:

- 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 Township Municipal Building at 157 West Metzler Road, Brownstown, where and by whom high priority messages to the Board of Supervisors 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 of the township, specifying when, where and in 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. In case of reasonable necessity but only after such minor's parent has communicated to the Township Police Department 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 therefor, 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 (here as 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 Board of Supervisors, carried on the person of the minor thus authorized, as follows. When necessary nighttime activities of a minor may be inadequately provided for by other provisions of this ordinance, then recourse may be had to the Board of Supervisors of the township, either for a regulation as provided in § 78-5 or for a special permit as the circumstances warrant. Upon the Board of Supervisors' finding of necessity for the use of the streets to the extent warranted by a written application signed by a minor

and by a parent of such minor, if feasible, stating the name, age and address of such minor, the name, address and telephone number of a parent thereof, the height, weight, sex, color of eyes and hair and other physical characteristics of such minor, the necessity which requires such minor to remain upon the streets during the curfew hours otherwise applicable and the street or route and the beginning and ending of the period of time involved by date and hour, the Board of Supervisors may grant a permit in writing for the use by such minor of such streets at such hours as in the Board of Supervisors' 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 Police Chief or, if unavailable, to the police officer authorized by the Board of Supervisors to act on his behalf in an emergency, at the police station.

- H. When authorized, by regulation issued by the Board of Supervisors, in other similar cases of reasonable necessity, similarly handled but adapted to necessary nighttime activities of more minors than can readily be dealt with on an individual special permit basis. Such regulation by the Board of Supervisors 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 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 chapter.
- 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 West Earl Township. This also exempts interstate travel beginning or ending in West Earl Township.
- K. When the minor is seventeen (17) years of age, if and when the Board of Supervisors shall have determined, by formal rule first reported to Board of Supervisors, included in 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 the township, finding that this chapter should be relaxed, then the Board of Supervisors by such formal rule, covering a period of time designated therein or until rescission 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. When the minor is involved in an emergency or is responding to an emergency as a member of a volunteer fire company or a similar organization.

**§ 78-6. 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, 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 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.

**§ 78-7. Police procedures.**

A police officer of the township, 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 Township 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 in charge 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 police officer 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 police officer 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. Such police officer 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 by himself and the Sergeant involved in such case, and the filing, of such report within twenty-four (24) hours.
- C. In the case of a violation by a minor, the Chief of Police may, 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.

**§ 78-8. 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 chapter, are hereby undergirded with the following legal sanctions:

- A. If, after the warning notice pursuant to § 78-7C of a first violation by a minor, a parent violates § 78-6 (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 twenty-five dollars (\$25.), and for each subsequent offense by a parent, the fine shall be increased by an additional twenty-five dollars (\$25.), e.g., fifty dollars (\$50.) for the second and seventy-five dollars (\$75.) 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.

- B. Any minor who shall violate any of the provisions of this chapter more than three (3) times shall be reported by the Chief of Police to the appropriate agency whose purpose it is to take charge of dependent and delinquent children 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 this chapter cannot be made effective by the imposing of penalties under this § 78-8.

**§ 78-9. Construal of provisions.**

Severability is intended throughout and within the provisions of this chapter. 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 chapter in any and all other respects shall not be affected thereby. From excess of caution, the Board of Supervisors 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 this chapter 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 township administration building, questioning as ambiguous, as having a potentially chilling effect on constitutional rights specifically invoked, or as otherwise invalid, in all three (3) 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 (3) categories. The Board of Supervisors does not intend a result that is absurd, impossible of execution or unreasonable. It is intended that this chapter 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 of Supervisors does not intend to violate the Constitution of the Commonwealth of Pennsylvania or the Constitution of the United States of America.