

## Chapter 88

### CURFEW

- |  |                                   |
|--|-----------------------------------|
| § 88-1. Title.                         | § 88-6. Parental responsibility.  |
| § 88-2. Purposes and findings.         | § 88-7. Police procedures.        |
| § 88-3. Definitions.                   | § 88-8. Violations and penalties. |
| § 88-4. Curfew for minors established. | § 88-9. Construal of provisions.  |
| § 88-5. Exceptions.                    | § 88-10. Continuing evaluation.   |

**[HISTORY: Adopted by the Borough Council of the Borough of Dormont at time of adoption of Code; see Ch. 1, General Provisions, Art. I. Amendments noted where applicable.]**

#### GENERAL REFERENCES

Loitering — See Ch. 135.

Peace and good order — See Ch. 153.

---

#### § 88-1. Title.

This chapter shall be known and may be cited as the “Curfew Ordinance.”

#### § 88-2. Purposes and findings.

This is a new Curfew Ordinance prescribing, in accordance with prevailing community standards, regulations for the conduct of minors on streets at night, effectively enforced, taught in the homes, internalized and adhered to for generations, all for the good of minors, for the furtherance of family responsibility and for the public good, safety and welfare.

- A. The Council finds that the curfew meets a very real local need, has been, over the years, a significant factor in minimizing juvenile delinquency and should be updated and amplified in the light of Dormont’s local situation and facts.
- B. The Council finds that compact Dormont is not overcrowded. Population density, as reflected in the Borough Comprehensive Plan, varies by neighborhoods. Adequate indoor living space permits minors in Dormont to healthfully occupy their time. Commercial recreational facilities are almost nonexistent, and there is little or nothing for minors to do outdoors but roam the streets after the curfew hours which this chapter declares.
- C. Dormont is a stable family community. Parental responsibility for the whereabouts of children is the norm; legal sanctions to enforce such responsibility have had a demonstrated effectiveness over the years; as parental control increases, the likelihood of juvenile delinquency decreases; and 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.

**§ 88-3. Definitions.**

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

**BOROUGH** — The Borough of Dormont, Allegheny County, Pennsylvania, with administrative offices at 2975 West Liberty Avenue, Dormont, Pennsylvania 15216.

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

**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 (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 § 88-5. 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).

**STREET** — A way or place, of whatever nature, open to the use of the public 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” also applies, for curfew purposes, to ways the public is privileged to use over private property so long as the owner permits, including sidewalks and grassplots similarly open at the time to public use, and to parking areas of any type (residential, municipal or commercial) open to public use or from such “street” or any type of street. The term “street” applies irrespective of what it is called for formally named, whether alley, avenue, court, road or otherwise, or whether it is maintained by the borough and irrespective of whether it is open to the use of the public as a matter of right.

**TIME OF NIGHT** — 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 seventeenth, to (but not including the day of) the next, such as the eighteenth birthday, making it clear that seventeen (17) or fewer 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. Similarly, for example, eleven (11) or fewer years of age means under twelve (12) years of age.

- B. 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.

**§ 88-4. Curfew for minors established.**

It has be unlawful for any person seventeen (17) or fewer years of age [under eighteen (18)] to be or remain in or upon the streets within the Borough of Dormont at night during the period ending at 6:00 a.m. and beginning:

- A. At 10:00 p.m. for minors eleven (11) or fewer years of age.  
B. At 10:30 p.m. for minors twelve (12) or thirteen (13) years of age.  
C. At 11:00 p.m. for minors fourteen (14) or more years of age.

**§ 88-5. Exceptions.**

- A. In the following exceptional cases, a minor on a street within the borough during the nocturnal hours for which § 88-4 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 this chapter:
- (1) When accompanied by a parent of such minor.
  - (2) 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.
  - (3) 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 communications center personnel at the Borough Municipal Building at 2975 West Liberty Avenue, where and by whom high priority messages to the Mayor are regularly received, a written communication, signed by such minor and countersigned, if practicable, by a parent of such minor, with his or her 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 hours when this chapter is otherwise applicable to said minor) in the exercise of a First Amendment right specified in such communication.
  - (4) 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 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.

- (5) 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.
- (6) 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 or her 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.
- (7) When authorized, by special permit from the Mayor, 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 chapter, then recourse may be had to the Mayor of the borough, either for a regulation as provided in Subsection A(8) 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*, 161 P. 2d 498, 502 – 503, Cal. App. 1945), 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 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 or her behalf in an emergency at the police station.
- (8) When authorized, by regulation issued by the Mayor, in other similar cases of reasonable necessity, similarly handled but adopted to necessary nighttime 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 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.
- (9) 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 or her home and of his or her place of employment and his or her hours of employment.

- (10) 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 Dormont. This also exempts interstate travel beginning or ending in Dormont.
- (11) When the minor is seventeen (17) years of age, if and when the Mayor shall have determined, by formal rule first reported to the 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 interest of said minors and of the borough, then the Mayor, 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 the date or attaining seventeen (17) years of age during the period that such formal rule is and remains in effect.
- B. 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 the 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.

#### **§ 88-6. 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 street within the borough 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.

#### **§ 88-7. Police procedures.**

- A. A policeman of the borough, 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 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 Sergeant

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 or her best judgment in determining age.

- B. 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 identify and address may readily be ascertained or are known.
- C. In any event, such policeman 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 or she is responsible, in the preparation, by himself or herself and the Sergeant involved in such case, and in filing of such report within twenty-four (24) hours.
- D. 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.
- E. 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 this chapter, including enforcement of parental responsibility and of applicable penalties.

#### **§ 88-8. 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 § 88-7 of a first violation by a minor, a parent violates § 88-6 (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, 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 and, upon refusal to pay such fine and costs, to be imprisoned in the jail of Allegheny County for a period not exceeding ten (10) days.
- B. Any minor who shall violate any of the provisions of this chapter more than three (3) 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, 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 section.

**§ 88-9. 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 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 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 or her at the borough 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 Borough Council 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 Council does not intend to violate the Constitution of the Commonwealth of Pennsylvania or the Constitution of the United States of America.

**§ 88-10. Continuing evaluation.**

The Borough Council will continue its evaluation and updating of this chapter.

- A. Accordingly, there shall be compiled and informally reported to the Borough Council through effective channels (such as the normal monthly distribution by the Borough Manager and Borough Secretary to each Councilman, the Mayor and the Borough Solicitor of noteworthy material) all exceptional cases hereunder for 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 the Borough Council in further updating and continuing evaluation of this chapter.
- 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 the 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 seventeen (17) or fewer years of age and with the working of this chapter, communitywise 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 Dormont.