

Chapter 6

Conduct

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Part 1**Littering****§6-101. Littering Prohibited.**

Whoever throws litter, wastepaper, sweepings, bottles, glass, ashes, household waste or rubbish or any kind onto any road, street, highway or alley or interferes with, scatters or disturbs the contents of any receptacle containing ashes, garbage, household waste or rubbish which shall be placed on any sidewalk or elsewhere for the collection of the contents thereof; or whoever throws or causes to be thrown on the land of another any litter, garbage, glass, metal, refuse, ashes, tin cans or any discarded or soiled personal property, shall, upon conviction thereof, 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 30 days.

(Ord. 3-1989, 10/9/1989, §75-1; as amended by Ord. 3-2005, 10/10/2005)

Part 2**Curfew****§6-201. Title.**

This Part shall be known and may be cited as the "Curfew Ordinance."
(Ord. 4-1980, 6/9/1980)

§6-202. Purpose.

The Borough Council finds that a need exists for the control of minors and the regulation of the uses of the streets of the Borough by such minors as herein prescribed for the public good, safety and welfare of the residents of the Borough of Clarks Green.
(Ord. 4-1980, 6/9/1980)

§6-203. Definitions.

1. When not inconsistent with the context, words used in the present t e n s e include the future; words in the plural include the singular; and words in the singular include the plural. The word "shall" is always mandatory and not merely directory.

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

Borough - the Borough of Clarks Green, Lackawanna County, Pennsylvania.

Minor - any person under the age of 18 years, or the equivalent phrasing often herein employed, 17 or fewer years of age.

Parent - any person having legal custody of a minor as a natural parent or adoptive parent, a legal guardian, a person who stands in *loco parentis* or a person to whom legal custody has been given by order of the courts.

Remain - to stay behind, to tarry and to stay unnecessarily upon the street, 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 passages or going home [the meaningful phrase being "be or remain," as found constitutional in *Baker v. Borough of Steelton*, 17 Dauph. 17 (1912), and a decision properly classified in *Thistlewood v. Trial Magistrate for Ocean City*, 204 A. 2d 688, 691 (Md. 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 car way of traffic lanes, the curb and 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 may be called or formally named, whether alley, avenue, court, road or otherwise.

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 birthday, such as the eighteenth, making it clear that 17 or fewer years of age are equivalent to the phrase "under 18 years of age."

(Ord. 4-1980, 6/9/1980)

§6-204. Hours.

It shall be unlawful for any person 17 or fewer years of age (under 18) to be or remain in or upon the streets within the Borough of Clarks Green at night during the period beginning at 10:30 p.m. and ending at 5:00 a.m.

(Ord. 4-1980, 6/9/1980)

§6-205. Exceptions.

A minor shall not be considered to be in violation of this Part in the following exceptional cases:

A. When accompanied by the parent of said minor.

B. When accompanied by an adult authorized by the 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 period of time.

C. When exercising First Amendment rights protected by the Constitution of the United States, 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 or his designated representative a written communication signed by such minor and, where practicable, countersigned by a parent of such minor with their home address and telephone number, specifying when, where and in what manner said minor will be on the streets during hours when this Part would otherwise be applicable to such minor, in the exercise of a First Amendment right specified in such communication.

D. In cases of reasonable necessity but only after such minor's parent has communicated to the Borough Police Department the facts establishing such reasonable necessity relating to specific streets at a specific time for a definite 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 the appropriate notation of the time it was received and the name and addresses of such minor and parent, shall be admissible as evidence.

E. When the minor is upon the sidewalk of the place where such minor resides or on the sidewalk of either next-door neighbor not communicating an objection to a police officer.

F. When returning home by a direct route from and within 30 minutes from 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.

G. When authorized by special permit from the Mayor carried on the person

of the minor thus authorized, as follows:

(1) When normal or necessary nighttime activities of a minor may be inadequately provided for by the terms of this Part, then recourse may be had to the Mayor of the Borough for a special regulation under the terms of subsection .1.G(2) or through an application for a special permit. Upon the Mayor's finding of necessity for the use of the streets to the extent warranted by the permit application (as judicially approved in *People v. Walton*, 161 P.2d 498, 502-503, Cal. App. 1945), signed by the minor and 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 or eyes and hair, and other physical characteristics of such minor; the reason which requires such minor to remain upon the streets of the Borough during the curfew hours; the street or route to be traveled by such minor; and the beginning and ending time of the period involved as to date and hour. Upon receipt of this application with the preceding information, the Mayor may grant a permit in writing for use by such minor for specific streets at specific hours as in the Mayor's opinion may be reasonably necessary. In an emergency this may be handled by telephone, provided that a written record of the proceeding is made contemporaneously by the Mayor or the police officer authorized by the Mayor to act in his behalf, in an emergency.

(2) The Mayor may, upon application, issue special group permits, provided that:

(a) The permit is for a limited period of time.

(b) The permit is issued sufficiently in advance to permit appropriate publicity through the news media and the schools and other agencies.

(c) Such permit defines the activity and the scope of the use of the streets permitted.

(d) The permit states the period of time allowed, not to extend more than 30 minutes beyond the termination of the special activity.

(e) Such special permit includes a statement by the Mayor stating the reason(s) for finding that such special permit is reasonably necessary and is consistent with the public interest and the purposes of this curfew ordinance.

H. When the minor carries a certified card of employment, renewable each calendar month, dated or reissued not more than 45 days previously, signed by the Chief of Police and briefly identifying the minor, the addresses of his home and place of employment and the hours of his employment.

I. When the minor is, with parental consent, in a motor vehicle. This constitutes normal travel and clearly exempts all interstate travel through the Borough of Clarks Green and all interstate travel beginning or terminating in the Borough.

J. Each of the foregoing exceptions is severable, as hereinafter provided, as are all exceptions that may be adopted subsequently as amendments to this Part.

(Ord. 4-1980, 6/9/1980)

§6-206. Parental Responsibility.

It shall be unlawful for a parent having legal custody of a minor to knowingly permit or by inefficient control to allow such minor to be or remain upon the streets of the Borough under circumstances not constituting an exception to, or otherwise beyond the scope of, this Part. This term "knowingly" shall be defined to include knowledge which a parent should be reasonably expected to have concerning the whereabouts of a minor in that parent's legal custody and 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 be, a fortiori, no defense that a parent is or was completely indifferent to the activities or conduct or whereabouts of such minor.

(Ord. 4-1980, 6/9/1980)

§6-207. Police Procedure.

A police officer of the Borough, upon finding or having attention called to any minor on the streets in prima facie violation of the curfew Part, shall normally take the minor to the Borough police station, where a parent shall immediately be notified to come for such minor, whereupon they shall be questioned. This is intended to ascertain pertinent and relevant facts, under constitutional safeguards, and to centralize responsibility in the officer on duty for accurate, effective, fair, impartial and uniform enforcement and recording. In the absence of convincing proof of age, such as a birth certificate, a policeman on the street shall in the first instance use his best judgment and experience in ascertaining age of such minor.

A. Police procedures shall be constantly refined in the light of experience and may provide, inter alia, that a policeman may deliver to a parent thereof a minor under appropriate circumstances, e.g., a minor of tender age, near home, whose identity and address may be readily ascertained or are known.

B. In any event, such policeman shall, within 24 hours, file a written report with the Mayor and Chief of Police stating the circumstances, action, results and disposition of each case.

C. When a parent has been immediately called and 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 custody of the minor, then the minor shall be released to the juvenile authorities, except to the extent that in accordance with Departmental regulations, previously approved by the juvenile authorities, the minor may be temporarily entrusted to a relative, neighbor or other person who will on behalf of the parent assume the responsibility of caring for the minor pending the availability or arrival of the parent.

D. In the case of a first violation by a minor, the Chief of Police shall, by certified mail, send to the parent written notice of said violation with a warning that any subsequent violation will result in full enforcement of the provisions of the curfew Part, including the Sections of parental responsibilities and penalties.

(Ord. 4-1980, 6/9/1980)

§6-208. Violations and Penalties.

If, after a warning notice is issued pursuant to the authority of §6-207 of this Part, a parent violates §6-206 by knowingly permitting or allowing such minor to be or remain on the streets of the Borough in violation of this Part, 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 30 days. Each day that a violation of this Part continues shall constitute a separate offense.

(*Ord. 4-1980*, 6/9/1980; as amended by *Ord. 3-1989*, 10/9/1989, §54-8; and by *Ord. 3-2005*, 10/10/2005)

