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ORDINANCE NO. 241

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AN ORDINANCE ESTABLISHING A CURFEW FOR MINORS, PENALTIES FOR MINORS AND PARENTS PERMITTING VIOLATIONS, PROVIDING FOR PROCEDURES UPON VIOLATION, AND EXCEPTIONS TO THE CURFEW.

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WHEREAS, the Borough of Berlin, by Ordinance No. 101, enacted August 17, 1943, established a curfew for minors; and,

WHEREAS, the Borough has found that said Ordinance has minimized the incidence of juvenile delinquency in the past and that there is a continuing need for such an Ordinance in that the community is relatively small, primarily residential, having but one (1) commercial establishment which operates twenty-four (24) hours daily, one (1) elementary school and one (1) high school and no commercial recreational facilities for children, prompting the conclusion and finding that minor children have little or nothing to do during nocturnal hours except wander the streets; and,

WHEREAS, the Borough has found that as parental control increases, the incidence of juvenile delinquency decreases and family stability increases, and that parental responsibility for the conduct of minor children is the acceptable community standard in the Borough; and,

WHEREAS, the Borough has found that a curfew ordinance is in the best interest of the public good, safety and welfare as well as the best interest of minor children, their health, safety and welfare in that it will minimize the risks of harm incidental to immaturity; and,

WHEREAS, the Borough has found that Ordinance No. 101 is procedurally and substantively outdated and is desirous of repealing the same and enacting an Ordinance which will more accurately comport with current community standards and existing procedures.

NOW THEREFORE, be it ordained and enacted by the Borough of Berlin and it is hereby ordained and enacted by the authority of the same, as follows:

Section One: DEFINITIONS

For purposes of this Ordinance, the following words or phrases shall have the following meanings, unless the context clearly requires otherwise:

Borough: The Borough of Berlin, Somerset County, Pennsylvania

Minor or Child: Any natural person who has not yet reached his

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eighteenth (18th) birthdate in the generally accepted manner of computing human age, i.e., the commencement of his or her nineteenth (19th) year of existence;

Parent: Any natural person having physical custody of a minor as a natural or adoptive parent, as a legal guardian, as a person standing in loco parentis or as a person to whom physical custody has been awarded by Order of Court;

to be or remain: to stay behind, tarry, stay unnecessarily, loiter, idle, wander, stroll or walk or play in or upon;

Public place: Any public street, sidewalk, highway, road, alley, park, playground, public building or vacant lot within the Borough;

Time or Hours or A.M. or P.M.: prevailing time, whether Eastern Standard Time or Eastern Daylight Savings time.

Section Two: CURFEWS

From and after the date hereof it shall be unlawful for any minor child to be or remain in or upon any public place within the Borough at night during the period ending at 5:00 o'clock A.M. and beginning

- A. At 10:00 o'clock P.M. for minors eleven (11) or less years of age;
- B. At 10:30 o'clock P.M. for minors twelve (12) and thirteen (13) years of age; and
- C. At 11:00 o'clock P.M. for minors fourteen (14) or more years of age, excepting Fridays and Saturdays, in which case the hours shall begin at 12:00 o'clock A.M.

Each violation of this Section shall constitute a separate offense by the minor.

Section Three: EXCEPTIONS

The provisions of the foregoing section shall not apply in the following cases:

- A. When a minor is physically accompanied by his or her own parent;
- B. When a minor is physically accompanied by an adult specifically authorized in writing by minor's parent to accompany the minor for a designated period of time for a specific purpose and to and from a specific place or places, all of which shall be set forth in writing and signed and dated by the minor's parent;
- C. When a minor is exercising a constitutionally protected right under the First Amendment of the Federal Constitution or comparable provision of the Constitution of the Commonwealth; provided, however, that prior to the exercise of any such protected right the minor shall first deliver to the Mayor written notice of his or her intention to exercise the same signed by the minor and if practicable, his or her parent, and setting forth specifically when, where and in what manner the minor intends to be in a public place during the curfew hours in the exercise of the protected right which shall also be specified;

D. With written permission of a parent and only in cases of reasonable necessity for a designated period of time, a specific purpose or purposes and to and from a specific place or places, all of which shall be in writing signed and dated by the parent;

E. When a minor is on a sidewalk adjacent to his or her primary residence or that of any next-door neighbor;

F. When a minor is returning to his or her primary residence by the most direct route and within thirty (30) minutes of the conclusion of a school activity, religious function or the function of any voluntary association whose primary purpose is the promotion of the health, safety or welfare of the public;

G. When a minor is possessed of a special permit issued by the Mayor upon a finding of reasonable necessity, after request by the minor and his or her parent. For these purposes, "reasonable necessity" shall mean reasons of a compelling equitable nature which would make application of the curfew to the minor unreasonable in the sole judgment of the Mayor, as, for example, a minor's employment during prohibited hours, the employment of another in the minor's household who is dependent upon the minor as an only driver for transportation to and from work and matters of a like or similar nature. In such cases, the minor and his or her parent, if practicable, shall make request in writing to the Mayor setting forth specifically the minor's name, age and address, his or her parent's name, address, and telephone number, the height, weight, sex, color of eyes and hair and other distinguishing physical characteristics of the minor, the necessity which requires the minor to be in public places during the curfew hours and the street or route as well as the times and dates and days involved.

H. When the Mayor, by special regulation or proclamation shall suspend the operation of this Ordinance for a special event for a period of time not to exceed thirty (30) minutes beyond the conclusion of the special event;

I. When the minor is lawfully operating or occupying a motor vehicle in interstate travel with the consent of the owner.

Section Four: PARENTAL RESPONSIBILITY FOR
MINOR'S CONDUCT

From and after the date hereof it shall be unlawful for any parent or parents to knowingly permit or allow, whether through indifference or lack of parental responsibility or otherwise, any minor to be or remain in or upon any public place within the Borough during the curfew hours applicable to such minor under any circumstances not constituting an exception to the provisions hereof. For purposes of this section, "knowingly" means knowledge which a parent should reasonably have concerning the whereabouts of a minor in that parent's physical custody.

Each violation of this Section shall constitute a separate offense, excepting the first violation by a minor of Section Three of this Ordinance for which a parent shall be warned pursuant to Section Five hereof.

Section Five: POLICE PROCEDURE

Upon confronting any minor in prima facie violation of the Curfew Ordinance, any police officer of the Borough shall immediately ascertain the minor's name, address and age. In the absence of documentary proof of age, a police officer shall exercise his best judgment in determining the minor's age. Forthwith, the

police officer shall instruct the minor to proceed to the minor's home immediately and, if possible, and if the minor is a resident of the borough, shall accompany the minor to his home. The police officer shall verbally notify the parent or parents of the alleged violation of this Ordinance. If the parent or parents of the minor are not at home and cannot be located with reasonable effort, the police officer shall immediately notify the juvenile authorities of Somerset County for such disposition as the juvenile authorities believe is appropriate under the circumstances, including, if prior approval of juvenile authorities is first obtained, entrusting the person of the minor to a relative, neighbor or other person who will assume responsibility for and care of the minor pending the arrival of a parent. Any police officer confronting a minor in prima facie violation of this Ordinance shall report the same to the Chief of Police at the earliest opportunity. Within seven (7) days of the alleged violation, the Chief of Police shall give written notice of the alleged violation to the minor's parent or parents, which same notice shall contain a warning that subsequent violations may result in the imposition of a fine or imprisonment or both, and which same notice shall be accompanied by a copy of this Ordinance.

Section Six: PENALTIES

A. If after notice of an alleged first violation by a minor pursuant to the foregoing section a parent or parents shall violate Section Four of this Ordinance, such parent or parents shall be guilty of a summary offense and upon conviction thereof shall be sentenced to pay a fine of not less than twenty-five (\$25.00) Dollars nor more than One Hundred (\$100.00) Dollars.

B. If after notice of an alleged first violation by a minor pursuant to the foregoing section and after one (1) conviction of a violation of Section Four of this Ordinance, a parent or parents who shall violate Section Four of this Ordinance a second or subsequent time shall be guilty of a summary offense and upon conviction of a second or subsequent offense shall be sentenced to pay a fine of not less than Fifty (\$50.00) Dollars nor more than Two Hundred (\$200.00) Dollars, or undergo imprisonment for a period of time not in excess of ten (10) days, or both.

C. Any minor who shall violate the provisions of Section Three of this Ordinance three (3) or more times, including a first violation for which a warning is issued pursuant to Section Five hereof, shall be reported to the juvenile authorities of Somerset County as incorrigible and as dependent and neglected for such disposition, formal or informal, as in the judgment of the juvenile authorities may be appropriate under all of the circumstances.

Section Seven: SEVERABILITY

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason declared invalid by any Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof.

Section Eight:

REPEALER

All Ordinances or parts or Ordinances inconsistent herewith and Ordinance No. 101, enacted August 17, 1943 and entitled "AN ORDINANCE TO PROHIBIT AN (SIC) CHILD UNDER EIGHTEEN (18) YEARS OF AGE UNLESS ACCOMPANIED AS HEREIN PROVIDED, TO BE IN OR UPON ANY HIGHWAY, PARK OR OTHER PUBLIC PLACE IN THE BOROUGH OF BERLIN, BETWEEN THE HOURS OF 10:00 P.M. and 5:00 A.M., DEFINING DUTIES OF PARENTS OR OTHER LEGAL CUSTODIANS OF SUCH CHILDREN AND IMPOSING PENALTIES FOR THE VIOLATIONS OF THE ORDINANCE" shall be and are hereby repealed.

Adopted by Council, this 1st day of October, 1981.

ATTEST:

BOROUGH OF BERLIN

Henry B. Claydon
Executive Borough Secretary
(SEAL)

By Thomas J. Larner
President of Borough Council

Approved, this 1st day of October, 1981.

H. Paul Saylor
Mayor, Borough of Berlin

CERTIFICATION

I certify that the foregoing Ordinance is a true and correct copy of Ordinance No. 241 enacted by the Berlin Borough Council on October 1, 1981.

Henry B. Claydon
Executive Borough Secretary