

Prepared By:
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ORDINANCE NO. 2020-6

AN ORDINANCE SETTING A CURFEW FOR JUVENILES UNDER THE AGE OF EIGHTEEN (18) WITHIN THE CITY OF POTTSVILLE, ARKANSAS; AND, FOR OTHER PURPOSES

WHEREAS, the City Council of Pottsville, Arkansas has determined that there has been an increase in crime and unacceptable behavior involving juveniles within the City of Pottsville, Arkansas;

WHEREAS, it is the desire of the City Council to take all legislative actions possible to help protect the health and welfare of the minor citizens of the City, as well as other minors that visit the City;

WHEREAS, it has come to the attention of the City Council that criminal offenses occur during nocturnal hours that often involve minors either as perpetrators or as victims; and

WHEREAS, a curfew in the City is particularly appropriate in view of the basic residential nature of the community and the sense of the community that there is a proper time for the cessation of outdoor activities of juveniles. This attitude of the community is reflected in the curfew hours declared by this Ordinance which takes into consideration the heightened hours during which nocturnal crimes occur.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF POTTSVILLE, ARKANSAS:

SECTION 1. This Ordinance shall be known as the "Juvenile Curfew Ordinance."

SECTION 2. This Ordinance is passed by the City Council of the City of Pottsville under the grant of authority given to it by the State of Arkansas under Ark. Code Ann. §14-43-602, 14-54-103, and 14-55-102.

SECTION 3. The Mayor and City Council of the City of Pottsville, Arkansas, find that:

- (a) Special circumstances exist within the City that call for the special regulation of juveniles within the City in order to protect them from each other and from other persons on the street during the nocturnal hours and during normal school

hours, whether public, private, or home schooling, to aid in crime prevention, to promote parental supervision and authority over juveniles and to decrease nocturnal crime rates and crime rates during school hours.

- (b) There has been a significant breakdown in the supervision normally provided by some parents and guidance for juveniles under 18 years of age, resulting in juveniles being involved in a wide range of unacceptable behavior including vandalism, noisy and unruly behavior, breaking and entering, public drinking and littering, harassment of residents, truancy or absenteeism from school and more serious violent crimes.
- (c) The offensive activities of juveniles are not easily controlled by existing laws and ordinances because the activities are concealed whenever police officers are present, and that the establishment of reasonable curfew regulations will enable the community to better control the free and unobstructed access to the streets and public places by the majority of residents and will enable the police to act reasonably and fairly to prevent the violation of laws and ordinances by juveniles.
- (d) Pottsville is basically a family community. Parental responsibility for the whereabouts of children is the accepted norm by a substantial majority of the community. Legal sanctions to enforce such responsibility have had demonstrated effectiveness in many communities over the years. As parental control increases, there is a likelihood that juvenile delinquency decreases and that there is a need for nocturnal curfew applicable to juveniles that will reinforce the primary authority and responsibility of parents and guardians over juveniles in their care and custody.
- (e) An emergency has been created by a substantial increase in the number and in the seriousness of crimes committed by minors against persons and property within the City, and this has created a menace to the preservation of public peace, safety, health, morals, and welfare.
- (f) The increase in juvenile delinquency has been caused in part by the large number of minors who are permitted to remain in public places and in certain establishments during night hours without adult supervision, and during daylight hours at times when, by law, they are required to attend school.
- (g) The problem of juvenile delinquency can be reduced by regulating the hours during which minors may remain in public places and in certain establishments without adult supervision, and by imposing certain duties and responsibilities upon the parents or other adult persons who have care and custody of minors.

SECTION 4. For the purposes of the Juvenile Curfew Ordinance, the following terms, phrases, words, and their derivations shall have the following meanings ascribed to them by this Section:

- (a) *City* is the City of Pottsville, Arkansas.
- (b) *District Court* means the District Court of Pope County, Pottsville Division, which has jurisdiction only within the city limits of the City of Pottsville. The term District Court shall mean Pope County Circuit Court, Criminal Division, only if a conviction by the Pottsville Division of the District Court of Pope County has been rendered on a Defendant who subsequently has appealed his or her conviction to Pope County Circuit Court, Criminal Division.
- (c) *Emancipated Juvenile* means a juvenile who no longer has a parent-child relationship as a result of marriage, or as a result of being recognized as an adult by order of a court of competent jurisdiction.
- (d) *Legitimate parentally approved errand* means a juvenile performing a necessary task at the direction of the juvenile's parent, and that the nonperformance of the errand, or delay of performance until after curfew hours have abated, would result in injury or undue hardship.
- (e) *Juvenile* is any unemancipated or unmarried person under the age of eighteen (18) years of age.
- (f) *Minor* is any unemancipated or unmarried person under the age of eighteen (18) years of age.
- (g) *Parent* is any person having legal custody of a juvenile (i) as a natural parent, (ii) as an adoptive parent, (iii) as a legal guardian, (iv) as a person to whom legal custody has been given by order of the court, and (v) as a person who stands *in loco parentis*.
- (h) *Public place* means a publicly or privately owned place to which the public or substantial numbers of people have access. A public place does not include the residence of a juvenile or, the residence of a juvenile's parent or a responsible adult.
- (i) *Responsible adult* means a person at least twenty-one (21) years of age to whom a parent has expressly given permission to accompany a juvenile.
- (j) *Remain* means to loiter, idle, wander, stroll or play in or upon.
- (k) *Street* means a way or place, of whatever 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 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 is called or formerly named, whether alley, avenue, court, road, or otherwise. The term "street" shall also include shopping centers, parking lots, parks, playgrounds, public buildings, the common areas of public housing developments, and similar areas that are open to the use of the public.

- (l) *Time of night* is based on the prevailing standard time, whether Central Standard Time or Central Daylight Savings Time, generally observed at that hour by the public in the City, prima facie the time then observed in the City police station.
- (m) *Years of age* continues from a birth date, such as the 17th, to (but not including the day of) the next, such as the 18th birthday, making it clear that 17 or less years of age be treated as equivalent to the phrase "under 18 years of age."

SECTION 5.

- (a) It shall be unlawful for any juvenile to loiter, ramble, play upon, frequent or to be upon the streets, highways, alleys, sidewalks, parks, playgrounds, public places and vacant lots, or to ride in or upon, drive or otherwise operate or be a passenger of any automobile, bicycle, or other vehicle in, upon, over or through the streets, or other public places in the City between the hours of 11:00 p.m. and 6:00 a.m. on Sunday through Thursday, and from 12:00 a.m. and 6:00 a.m. on Friday and Saturday. If a police officer reasonably believes that a juvenile is on the streets in violation of this Section, the officer shall notify the juvenile that he is in violation of this Ordinance and shall provide his name, address and telephone number and how to contact his parent or guardian. In determining the age of the juvenile believed to be in violation of this Ordinance, and in the absence of convincing evidence, a police officer shall use his best judgment in determining age.
- (b) It shall be unlawful for any parent to knowingly permit a juvenile to loiter, ramble, play upon, frequent or to be upon the streets, sidewalks, parks, playgrounds, public places and vacant lots, or to ride in or upon, drive or otherwise operate, a vehicle in, upon, over or through the streets, or other public places in the City between the hours of 11:00 p.m. and 6:00 a.m. on Sunday through Thursday, and from 12:00 a.m. to 6:00 a.m. on Friday and Saturday. The fact that a juvenile is in violation of the provisions of subsection (a) hereinabove, without a defense as set forth in Section 6, shall create a rebuttable presumption that a parent is in violation of this subsection.
- (c) It shall be no defense to the Section that a parent was indifferent to the activities, conduct, or whereabouts of such juvenile.

- (d) It shall be unlawful for any operator of an establishment or his agents or employees to knowingly permit any juvenile to remain upon the premises of said establishment in the City between the hours of 11:00 p.m. and 6:00 a.m. on Sunday through Thursday, and between 12:00 a.m. and 6:00 a.m. on Friday and Saturday. The fact that a juvenile is in violation of the provisions of subsection (a) hereinabove, without a defense as set forth in Section 6, shall create a rebuttable presumption that a parent is in violation of this subsection.

SECTION 6.

- (a) Notwithstanding the provisions of Section 5, the Juvenile Curfew Ordinance does not apply:
- (1) Anytime a juvenile is accompanied by a parent, or by a responsible adult authorized by a parent to take the parent's place to accompany the juvenile, for a designated period of time and purpose within a specified area.
 - (2) If the juvenile is employed, for a period of forty-five (45) minutes after work, provided that circumstances suggest the juvenile is returning from work to a place of residence.
 - (3) When a juvenile is returning home from an activity that is supervised by adults and sponsored by the City, a civic organization, a public or private school, religious organization, other recreational; activity sponsored by adults or any entity that takes responsibility for the juvenile, provided that the activity has not concluded for more than forty-five (45) minutes.
 - (4) When the juvenile is on a trip in interstate commerce.
 - (5) When the juvenile is required to leave a residence because of an emergency.
 - (6) At anytime the juvenile is engaged in an activity that is protected by the First Amendment to the United States Constitution, or the freedom of speech, religion, or expression provisions in Article II of the Arkansas Constitution.
- (b) If a juvenile being questioned about the possible violation of the Juvenile Curfew Ordinance provides a law enforcement officer with sufficient reason to believe that the juvenile is entitled to an exemption under subsection (a) above, the law enforcement officer shall take no more enforcement actions under this article, provided the officer may make a report of the juvenile's identity, the exemption claimed, and other necessary information to note the possible violation of this article.

SECTION 7.

- (a) A juvenile found to be in violation of this article shall be subject to penalties provided in Section 8 of this Ordinance, or to such other disposition including suspension, probation, or conditions for suspension for probation, as determined by the judge of the District Court in accordance with Arkansas law.
- (b) A parent of a juvenile charged with a violation of this Ordinance may be notified of such violation and required to appear before the District Court for any hearing which involves the juvenile.
- (c) At the discretion of the law enforcement officer, any juvenile arrested or cited for violation of the Juvenile Curfew Ordinance may be released to immediately return home or to school, may be escorted to their home or school, or may be taken into custody and delivered to an appropriate location, or juvenile authority, to be held until a parent can be located to take custody of the juvenile.
- (d) Nothing in this Section shall preclude a law enforcement officer from taking any or all appropriate actions for a juvenile's violation of any other local or State law.

SECTION 8. Any parent, guardian or other person having legal care or custody of any person under the age of eighteen (18) years; any juvenile person under the age of eighteen (18) years; or any operator of an establishment or his agents or employees violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined up to one hundred dollars (\$100.00) plus court costs for the first offense. For a second conviction such juvenile person; parent, guardian, or legal custodian of such juvenile person; or operator of an establishment or his agents or employees shall be fined not more than two hundred and fifty dollars (\$250.00) plus court costs. For any three or more convictions such juvenile person; parent, guardian, or legal custodian of such juvenile person; or operator of an establishment or his agents or employees shall be fined not less than two hundred and fifty dollars (\$250.00) and not more than five hundred dollars (\$500.00) plus court costs. The District Court may substitute community service in lieu of the fines but not in lieu of the court costs.

SECTION 9. Notice is presumed to be received by a parent if deposited in a depository for mailing United States Mail, properly addressed and with first-class postage paid. The mailing may be shown by records of the sending agency made in the regular course of business.

SECTION 10: Any and all prior resolutions, ordinances, or parts of the same, which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 11: If any provision of this ordinance or the application thereof to any person or circumstances is declared to be invalid, such invalidity shall not affect the other provisions or applications of the ordinance which may be given effect without the invalid provision(s) or application(s), and to this end the provisions of this ordinance are declared severable.

SECTION 12. EMERGENCY CLAUSE. An emergency has been created by a substantial increase in the number and in the seriousness of crimes committed by juveniles against persons and property within the City. Therefore, an emergency is declared to exist and this Ordinance is necessary to preserve the public peace, health, and safety of the citizens of Pottsville, Arkansas and shall be in full force and effect on the date it is passed.

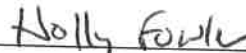
Passed and approved this 22nd day of June 2020.



RANDY TANKERSLEY
MAYOR

ATTEST:

I, Holly Fowler, City Clerk of Pottsville, Arkansas, hereby certify that the above and foregoing is a true and correct copy of Ordinance No. 2020-6 passed by the Pottsville City Council on the 22nd day of June 2020.



HOLLY FOWLER
POTTSVILLE CITY CLERK

