

ARTICLE 9

CURFEW HOURS FOR MINORS
("Youth Protection Ordinance")

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ARTICLE 9

CURFEW HOURS FOR MINORS ("Youth Protection Ordinance")

SEC. 4-9.00 TITLE. This Article shall be known as the "Curfew Hours for Minors Ordinance."

SEC. 4-9.01 PURPOSE AND INTENT. The purpose of this Article is to protect youth from unlawful and corrupting influences; to reduce juvenile crime, especially violent crime committed by and perpetrated against juveniles; and to promote the public health, safety, and general welfare during late night and school hours. Although the City Council desires to reduce the incidents of juvenile crime and victimization, the City Council does not intend to prohibit, prevent, or interfere with a youth's exercise of First Amendment or other rights under the United States Constitution. This Article's provisions preserve those constitutionally protected rights.

In enacting this Article, the City Council is updating the City's existing curfew ordinance for minors to ensure the ordinance conforms to *Nunez v. City of San Diego*, 114 F.3d 935 (9th Cir. 1997), which requires sufficient specificity in the ordinance language.

The City Council hereby finds and declares that:

- (a) The City's nighttime and daytime curfews for minors are a significant factor in the City of Hayward's efforts to minimize juvenile violence, criminal street-gang activity, and crime by and against juveniles in the city;
- (b) Because of their lack of maturity and experience, persons under the age of eighteen years are particularly susceptible to the lure of unlawful and gang-related activities and to becoming the victims of crime;
- (c) Appropriate nighttime and daytime curfews will assist the City Council in its objective of protecting the welfare of minors by: (1) reducing the likelihood that minors will become the victims of criminal acts, (2) reducing the likelihood that minors will participate in criminal acts, unlawful gang-related activity, drug use, or narcotics trafficking, and (3) assisting parents and guardians in carrying out their parental responsibility to exercise reasonable supervision and control over minors entrusted to their care;
- (d) Daytime and nighttime curfews for minors will be in the interest of the public health, safety, and general welfare.

SEC. 4-9.02 DEFINITIONS. For the purpose of this Article, certain words and phrases are defined, and certain provisions shall be construed as herein set out, unless it shall be apparent from their context that a different meaning is intended:

- (a) 'Nighttime Curfew hours' means: (1) 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. of the following day (Friday); (2) 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday.

- (b) 'Daytime Curfew Hours' means: For any minor who is subject to compulsory education or to compulsory continuing education, the actual hours when said minor's school is in session.
- (c) 'Emergency' means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.
- (d) 'Minor' means any person less than 18 years of age, unless the person is: (1) on active duty with the armed forces of the United States, (2) validly married, whether or not the marriage has been dissolved, or (3) otherwise emancipated under California Family Code sections 7000 et seq. or another state's laws. For the purposes of this Article, the term is synonymous with the terms "youth" and "juvenile."
- (e) 'Adult' means any person 18 years of age or older.
- (f) 'Parent' means a person who is a natural parent, adoptive parent, or step-parent of another person.
- (g) 'Guardian' means: (1) a person who, under court order, is the guardian of the person of a minor; or (2) a public or private agency with whom a minor has been placed by a court; or (3) a person who is at least eighteen (18) years of age and is authorized by the minor's parent or guardian to have the care and custody of that minor.
- (h) 'Public place' means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, roads, alleys, sidewalks, highways, and the common areas of schools, hospitals, apartment houses, office buildings, public buildings, transport facilities, shops, parks, playgrounds, malls, places of amusement, eating establishments, shopping centers and parking lots.
- (i) 'Remain' means to: (1) linger or stay, whether on foot or in a vehicle; or (2) fail to leave premises when requested to do so by a police officer or the owner, operator, or person in control of the premises.

SEC. 4-9.03 NIGHTTIME CURFEW OFFENSE.

- (a) A minor commits an offense if he or she remains in any public place within the City of Hayward during nighttime curfew hours.
- (b) A parent or guardian of a minor commits an offense if he or she knowingly permits, or by insufficient control allows, the minor to remain in any public place within the City of Hayward during nighttime curfew hours.

SEC. 4-9.04 LIMITATIONS TO NIGHTTIME CURFEW OFFENSE. The offenses listed in section 4-9.03 shall not apply when the minor is:

- (a) Accompanied by the minor's parent, guardian, or other adult having care or custody of the minor; or

- (b) On an errand directed by his or her parent, guardian, or other adult having care or custody of the minor, without any unnecessary detour or stop; or
- (c) In said place or places in connection with, or as a requirement of, a business, trade, profession or occupation in which the minor is lawfully engaged, or going to or returning home from without any unnecessary detour or stop; or
- (d) Involved in an emergency, receiving medical treatment or care, or going to or coming from a medical appointment, without any unnecessary detour or stop; or
- (e) In a motor vehicle, train or bus involved in interstate travel, or the minor is waiting at a train station or officially designated bus stop, during the hours that those modes of transportation function; or
- (f) On the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the police department about the minor's presence; or
- (g) Attending a school, religious, or other recreational activity, such as a movie, play, concert, school event or sporting event, or going to or returning home from such activity without any unnecessary detour or stop; or
- (h) 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.

SEC. 4-9.05 DAYTIME CURFEW OFFENSE.

- (a) It is unlawful for any minor, who is subject to compulsory education or to compulsory continuation education to loiter, idle, wander, or be in a public place when said minor's assigned school is actually in session. This section shall also apply to a minor whose enrollment status is under suspension, expulsion, or transfer in progress.
- (b) A parent or guardian of a minor commits an offense if he or she knowingly permits, or by insufficient control allows, a minor who is subject to compulsory education or to compulsory continuation education to violate 4-9.05(a). No parent or guardian shall refuse to take custody of a minor who has been detained, arrested or issued a citation for violation of this Article.

SEC. 4-9.06 LIMITATIONS TO DAYTIME CURFEW OFFENSE. The offenses listed in section 4-9.05 shall not apply when the minor is:

- (a) Accompanied by the minor's parent, guardian, or other adult having care or custody of the minor; or
- (b) On an errand directed by his or her parent, guardian, or other adult having care or custody of the minor, without any unnecessary detour or stop; or
- (c) In said place or places in connection with, or as a requirement of, a business, trade, profession or occupation in which the minor is lawfully engaged, or going to or returning home from without any unnecessary detour or stop; or

- (d) Involved in an emergency, receiving medical treatment or care, or going to or coming from a medical appointment, without any unnecessary detour or stop; or
- (e) Off of the school campus for lunch or school-related activity, and has in his or her possession a valid, school issued, off-campus permit, or is otherwise authorized to be absent from his or her school pursuant to the provisions of California Education Code § 48205, or any other applicable state or federal law; or
- (f) Exempt by law from compulsory education or compulsory continuing education as provided by the California Education Code, or is going directly to, or coming directly from, a compulsory alternative education program activity; or

SEC. 4-9.07 ENFORCEMENT.

- (a) Before taking any enforcement action under this Article, a police officer shall ask the apparent offender's name, address, age, and reason for being in the public place, and any other information reasonably necessary to determine whether a violation exists. The officer shall not issue a citation or make an arrest under this Article unless the officer reasonably believes that an offense has occurred, as set forth above.
- (b) There is no requirement of a first warning in order for the officer to issue an Administrative Citation under this Article.

SEC. 4-9.08 PENALTIES. A person who violates a provision of this Article is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. In addition to all other remedies or penalties provided by law, a violation of any of the sections contained in this Article is punishable by administrative penalties as set forth in Chapter 1, Article 7 of the Hayward Municipal Code.

SEC. 4-9.09 HEARINGS ON THE IMPOSITION OF ADMINISTRATIVE PENALTIES – APPEALS. Any person subject to administrative penalties pursuant to this Article shall have the right to request an administrative hearing in accordance with Hayward Municipal Code 1-7.07 through 1-7.10, inclusive. The administrative penalties imposed by this Article do not preclude other potential civil actions or criminal prosecution under any other provision of law, including but not limited to Education Code § 48264.