

ORDINANCE 2000-7

**AN ORDINANCE TO ESTABLISH A JUVENILE
CURFEW LAW FOR THE TOWN OF MILLERSBURG**

WHEREAS, the Town Council of the Town of Millersburg, Indiana had determined that juvenile loitering, congregating, or presence in or upon public streets in the late night and early morning hours is detrimental to health, welfare and safety of the juvenile and community as a whole; and

WHEREAS, the Town Council acknowledges that on July 3, 2000, the Indiana curfew law was ruled unconstitutional by a federal judge in a decision titled Hodgkins vs. Peterson; and

WHEREAS, the Town Council acknowledges that in the absence of a state statute, I.C. 36-1-3 Home Rule gives the authority of a town's legislature to exercise the powers necessary to effective governing of local affairs; and

WHEREAS, the Town Council acknowledges that juveniles have First Amendment rights of freedom of speech, freedom of religion and right to assembly; and

WHEREAS, the Town Council believes that an enforceable curfew ordinance that protects the First Amendment rights of the community's juveniles is in the best interest for the safety and welfare of the community's juveniles, as well as the community as a whole.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MILLERSBURG, INDIANA, THAT:

Section 1. Definitions. As used within this ordinance, the following words and phrases shall have the meanings assigned to them below:

- (a) *Curfew hours* for individuals fifteen (15), sixteen (16) and seventeen (17) years of age refers to the time between 1:00 a.m. and 5:00 a.m. on Saturday or Sunday; after 11:00 p.m. on Sunday, Monday, Tuesday, Wednesday, or Thursday; and before 5:00 a.m. on **Monday, Tuesday, Wednesday, Thursday or Friday.** Curfew hours for individuals less than fifteen (15) years of age; refers to the time after 11:00 p.m. and before 5:00 a.m. on any day.

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- (b) *Emergency* refers to unforeseen circumstances, or the status or condition resulting therefrom, requiring immediate action to safeguard life, limb or property. The term includes, but is not limited to, fires, natural disaster, automobile accidents, or other similar circumstances.
- (c) *Establishment* refers to any privately owned place of business within the Town operated for a profit, to which the public is invited, including but not limited to, any place of amusement or entertainment. With respect to such establishment, the term "operator" shall mean any person, and any firm, associates, partnership (and the members or partners thereof) and/or any corporation or limited liability company (and the officers or managers thereof) conducting or managing that establishment.
- (d) *Minor* refers to any person under eighteen (18) years of age.
- (e) *Parent* refers to:
 - (1) A person who is a minor's biological or adoptive parent and who has legal custody of a minor (including either parent, if custody is shared under a court order or agreement);
 - (2) A person who is the biological or adoptive parent with whom a minor regularly resides;
 - (3) A person judicially appointed as a legal guardian of the minor, and/or
 - (4) A person eighteen (18) years of age or older standing in loco parentis (as indicated by the authorization of an individual listed in part (e) (1), (2) or (3) of this definition, for the care or physical custody of the child, or as indicated by any other circumstances).
- (f) *Person* refers to an individual, not to any association, corporation or any other legal entity.
- (g) *Public place* refers to any place to which the public or a substantial group of the public has access, including, but not limited to, streets, highways, roads, sidewalks, alleys,

avenues, parks, and/or the common area of schools, hospitals, apartment houses, office buildings, transportation facilities and shops.

(h) *Remain* refers to the following actions:

- (1) To linger or stay at or upon a place; and/or
- (2) To fail to leave a place when requested to do so by an officer of the Millersburg Police Department, a member of its Police Reserves or any other state or county police officer with law enforcement jurisdiction within the Town of Millersburg.

Section 2. Prohibited Acts.

(a) It shall be unlawful for minor, during curfew hours, to remain in or upon any public place within the Town, to remain in any motor vehicle operating or parked therein or thereon, or to remain in or upon the premises of any establishment within the Town, unless:

- (1) The minor is accompanied by a parent; or
- (2) The minor is involved in an emergency; or
- (3) ~~The minor is engaged in an employment activity, or is going to or returning~~ home from such activity, without detour or stop; or
- (4) The minor is on the sidewalk directly abutting a place where he or she resides with a parent, or
- (5) The minor is attending an activity sponsored by a school, religious, or civic organization or agency, or by another similar organization or entity, which ~~activity is supervised by an adult, and/or minor is going to or returning from~~ such an activity without detour or stop; or
- (6) The minor is involved in interstate travel through, or beginning or terminating ~~in, the Town of Millersburg, Indiana; or~~
- (7) The minor is exercising First Amendment rights protected by the United States Constitution, such as the bona fide free exercise of religion, freedom of speech and the right to assembly.

- (b) It shall be unlawful for a minor's parent to knowingly permit, allow or encourage such minor to violate any term of this ordinance.
- (c) It shall be unlawful for a person who is the owner or operator of any motor vehicle to knowingly permit, allow or encourage a violation of any term of this ordinance.
- (d) It shall be unlawful for the operator of any establishment, or for any person, who is an employee thereof, to knowingly permit, allow or encourage a minor to remain upon the premises of the establishment during the curfew hours. It shall be a defense to prosecution under this (d) that the operator or employee of an establishment promptly notified the police department that a minor was present at the establishment after curfew hours and refused to leave.

Section 3. Enforcement. A police officer, before taking any legal action, may take steps necessary to question any individual who appears to be under the age of eighteen (18) years for the specific purpose of enforcing this ordinance. Before taking any enforcement action under this section, a police officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation under this ordinance unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, none of the factors referenced at parts (1) through (8) of Section 2. (a) of this ordinance is present. An effort will be made on behalf of the Millersburg Police Department to contact the minor's parent to inform them of the alleged curfew violation under this ordinance.

Section 4. Penalties.

- (a) A person who violates a provision of this ordinance is in violation of a separate offense for each day or part of a day, during which a violation is committed, continued or permitted. Each offense is punishable by fine, plus court costs.
- (b) The fines shall be punishable by the following schedule:
 - (1) First offense \$50.00, plus court costs

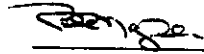
- (2) Second offense \$100.00, plus court costs
- (3) Third offense and each offense thereafter \$200.00, plus court costs

Section 5. Fund Distribution.

- (a) Monies so collected and deposited shall be dedicated to the Marshal's program.
- (b) Monies collected as fines assessed as described in Ordinance 2000-7 Section 4. (b) shall be deposited in the Marshal's Program and shall used solely for the purpose designated in Ordinance 2000-7 Section 5. (a).
- (c) **Section 6. Effective Date.** This Ordinance shall be in full force and effect from and after its passage by the Town Council, signature of the Town Council, attestation by the Clerk/Treasurer and publication as required by law.

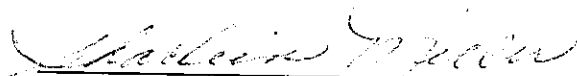
Passed and enacted by the Town Council of the Town of Millersburg, Indiana on the 27 day of November, 2000.

Presented to and approved by me this 4th day of December, 2000.




Robert Majdak

Greg Baumgartner



Sharlein Miller

Attest: 
Wanda R Chupp
Clerk/Treasurer