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Memorandum

DATE: June 14, 2004
TO: Mayor Satterthwaite and Urbana City Council
FROM: Steve Holz
RE: Proposed amendment to Curfew Ordinance (Code Section 15-63)

Introduction

For many years, the City of Urbana has had a curfew ordinance prohibiting minors who are 16 years old or younger to be in public places during certain nighttime hours. Those hours are midnight to 6:00 a.m. on Friday and Saturday nights, and 11:00 p.m. to 6:00 a.m. on all other nights. The current ordinance makes exceptions for minors accompanied and supervised by parents or legal guardians or someone else who is at least 18 years of age and has been approved by a parent or legal guardian. The current ordinance also contains an exception that allows minors to be out past curfew while they are working.

Many states and municipalities have similar laws. In fact, the part of Urbana's curfew language that is discussed above is identical to the State of Illinois "Child Curfew Act" (720 ILCS 555/0.01, et seq.). It appears that Urbana's curfew ordinance was copied word-for-word from the Illinois Child Curfew Act.

The *Hodgkins v. Peterson* decision

A recent decision of the Seventh Circuit U.S. Court of Appeals reviewed a similar law of the State of Indiana, and found Indiana's curfew law unconstitutional. (See *Hodgkins v. Peterson*, 355 F.3d 1048 (7th Cir. 2004)) As a consequence of its decision, the Court threw into doubt the constitutionality of curfew laws and ordinances throughout the Seventh Circuit's 3-state (Illinois, Indiana, and Wisconsin) jurisdiction.

Upon publication of the *Hodgkins* Court's decision regarding the Indiana law, I informed the Urbana Police Department that Urbana's curfew ordinance was subject to constitutional challenge on the same basis as the Indiana law involved in the *Hodgkins* decision, and I directed the Urbana Police Department to cease enforcement of the ordinance pending further review of the Court's decision and amendment of Urbana's curfew ordinance. In addition, I directed the

Police Department to stop enforcing the State of Illinois Child Curfew Act until such time as the State amended its law.

At issue in *Hodgkins* was an Indiana statute that prohibited minors between the ages of 15 and 17 from being in a public place after 11:00 p.m. on weekdays and 1:00 a.m. on weekends. The statute provided various affirmative defenses to the offense, including those that are contained in Urbana’s ordinance. However, the Indiana statute provided even broader protections, as noted later in this report. Despite the wide variety of exceptions listed in the statute, the 7th Circuit concluded that a minor is still subject to arrest for curfew violations, even if engaged in an act exempted by the ordinance, because the defenses listed could only be raised for the first time in court. According to the 7th Circuit Court, this procedure had the effect of “chilling” First Amendment activities, and the statute was therefore unconstitutional.

The Court suggested that this “chilling” effect could be eliminated by requiring police officers to inquire of the apparent offender as to the reason for being in a public place during curfew hours before taking any enforcement action. By doing so, the officer could make an initial determination whether the minor is engaged in constitutionally protected activity. If the officer has reason to believe that none of the exceptions applies, the officer can issue a citation. This affirmative obligation reduced any “chilling” effect on First Amendment rights that may result from the existence of the curfew statute.

Unless the United States Supreme Court provides different guidance, for now, the *Hodgkins* case makes it clear that Urbana’s curfew ordinance, as well as the State of Illinois Child Curfew Act and many other community’s ordinances will not withstand constitutional scrutiny as written.

Proposed Amendments

The attached proposed ordinance contains language designed to bring Urbana’s curfew ordinance in line with the Seventh Circuit’s constitutional holding in *Hodgkins*. The proposed curfew ordinance is designed to help reduce juvenile crime and victimization – which the *Hodgkins* court recognized as compelling government interests -- while promoting juvenile safety and well-being. It includes exemptions that courts have found help strike the appropriate balance between the City’s legitimate governmental interest in protecting both juveniles and the public from juvenile offenders, and the need to protect the constitutional rights of juveniles. The proposal includes the same substantive exemptions that were present in the *Hodgkins case*, namely:

- accompanied by a parent, guardian or custodian (Note that Urbana’s current ordinance already contains this exception);
- accompanied by an adult specified by the child’s parent, guardian, or custodian (Note that Urbana’s current ordinance already contains this exception);
- participating in, going to, or returning from:
 - lawful employment (Note that Urbana’s current ordinance already contains this exception);
 - a school sanctioned activity;
 - a religious event;
 - First Amendment Activity such as freedom of speech and the right of assembly;or

- an activity conducted by a nonprofit or governmental entity that provides recreation, education, training, or other care under the supervision of one or more adults;
- interstate or international travel; or
- emergencies.

The proposed language also includes exemptions found in another court's decision (*Quib v. Strauss*, 11 F.3d 488, 492 (5th Cir.1993)) that does not have authority over the City of Urbana, but which is persuasive, namely minors who are:

- on an errand at the direction of the minor's parent or guardian without any detour or stop; or
- married or emancipated.

The proposed language also puts a duty on the officer to inquire as to why an apparent offender is in a public place during the curfew hours.

You will note that current paragraphs (c) and (d) (re-numbered in the proposal to (e) and (f)) contain language for an escalating series of fines that would apply for curfew violations if the offender appears in court. Those amounts are different than the amounts contained in the pay-by-mail fine schedule that was recently considered and amended by the City Council. While technically there is no conflict between the pay-by-mail provisions and the specific fine provisions in paragraphs (c) and (d) of the curfew ordinance itself (because the pay-by-mail fine applies before a case is filed, while the provisions in the curfew ordinance apply after a case is filed and goes to court), there is nevertheless the possibility of confusion caused by the co-existence of those provisions. I point that out to offer the Council an opportunity to make the scheme of fines for curfew cases less confusing. My suggestion would be to eliminate the specific fine provisions of current paragraphs (c) and (d), and instead rely on the recently revised pay-by-mail fines.

Lastly, note that current subparagraphs (b) and (d) contain language prohibiting a parent or guardian of a minor 16 years of age or under from being out in public unsupervised past the curfew hours. The Hodgkins court briefly touched on the question of whether this type of provision violates a parent's right of due process in making decisions about their children's upbringing. However, the court expressly decided not to decide whether this violates the parent's constitutional rights, and left the question open for determination in the future. Nevertheless, in my view, the language of current paragraph (d) is likely to be found unconstitutional, unless it at least contains the same exceptions as are proposed as defenses for the minor. Accordingly, the proposed draft includes language making those exceptions.

This Ordinance:
AMENDS the Code of Ordinances.

ORDINANCE NO. 2004-06-068

AN ORDINANCE AMENDING THE CODE OF ORDINANCES
(CURFEW FOR MINORS)

WHEREAS, the City Council of the City of Urbana has a compelling interest in helping reduce juvenile crime and victimization, while promoting juvenile safety and well-being; and

WHEREAS, the City Council finds that keeping juveniles out of public places during certain hours will advance this compelling interest; and

WHEREAS, the City Council is desirous of enacting ordinances in compliance with the Constitutions of the United States and the State of Illinois; and

WHEREAS, the City Council finds that it is necessary to revise Section 15-63 of the Code of Ordinances of the City of Urbana, as amended to protect the aforementioned compelling governmental interests while complying with all provisions of the Federal and State of Illinois Constitutions;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. That Section 15-63 of the Code of Ordinances of the City of Urbana is amended, with the underlined text indicating new language and the strikethrough text indicating deletions as follows:

Sec. 15-63. Curfew for minors.

(a) Unless one or more of the exceptions listed in subparagraph (c) applies, it is unlawful for a person less than seventeen (17) years of age to be present at or upon any public assembly, building, place, street or highway at the following times ~~unless accompanied and supervised by a parent, legal guardian or other responsible companion at least eighteen (18) years of age approved by a parent or legal guardian or unless engaged in a business or occupation which the laws of this state authorize a person less than seventeen (17) years of age to perform:~~

- (1) Between 12:01 a.m. and 6:00 a.m. Saturday;
- (2) Between 12:01 a.m. and 6:00 a.m. Sunday; and
- (3) Between 11:00 p.m. on Sunday to Thursday, inclusive, and 6:00 a.m. on the following day.

(b) It is unlawful for a parent, legal guardian or other person to knowingly permit a person in his/her custody or control to violate subsection (a) of this section, except where one or more of the exceptions listed in subsection (c) applies.

(c) Exceptions. Notwithstanding the prohibitions of subparagraphs (a) and (b) it shall not be unlawful for a minor to be present at or upon a public assembly, building, place, street or highway during the curfew hours if the minor:

- (1) _____ is accompanied and supervised by the minor's parent, legal guardian or other responsible companion at least eighteen (18) years of age approved by the minor's parent or legal guardian; or
- (2) _____ is participating in, going to, or returning from, without any detour or stop, and with permission of the minor's parent or guardian:
 - A. _____ an errand at the direction of the minor's parent, legal guardian, or custodian;
 - B. _____ a business or occupation which the laws of this state authorize a person less than seventeen (17) years of age to perform;
 - C. _____ a school sanctioned activity;
 - D. _____ a religious event;
 - E. _____ an activity involving the exercise of the child's rights protected under the First Amendment to the United States Constitution or Sections 3, 4 and 5 of the Constitution of the State of Illinois such as the free exercise of religion, freedom of speech, and the right of assembly;
 - F. _____ an activity conducted by a nonprofit or governmental entity that provides recreation, education, training, or other care under the supervision of one or more adults;
 - G. _____ interstate or international travel for lawful purposes; or
- (3) is married or has been married or is an emancipated minor pursuant to the provisions of 750 ILCS 30/1, et seq. as amended; or
- (4) is involved in an emergency regarding the protection of a person or property from an imminent threat of serious bodily injury or substantial damage.

(d) 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

Notice to Appear or make an arrest under this section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no exception in subsection (c) is present.

(cc) Any minor violating subsection (a) shall be fined not less than three dollars (\$3.00) nor more than twenty-five dollars (\$25.00) for the first offense, not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00) for the second offense, and not less than one hundred dollars (\$100.00) nor more than two hundred dollars (\$200.00) for a third offense and all subsequent offenses.

(df) Any parent, guardian or other person having legal custody or control of any minor who shall permit or allow the minor to be upon any street, alley or any other public place in the city in violation of subsection (a), except where one or more of the exceptions listed in subsection (c) applies, shall be subject to a fine of not more than twenty-five dollars (\$25.00). If any such minor is held to be in violation of the curfew restrictions of subsection (a) a second time within a twelve (12) month period, then such parent, guardian or person responsible for the care and custody of the minor violator shall be fined not more than fifty dollars (\$50.00); and if a minor is found to be in violation of the curfew restrictions a third time and all subsequent times during a twelve (12) month period, then the parent, guardian or person responsible for the minor violator shall be fined not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200.00).

Section 2. The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities, and this Ordinance shall be in full force and effect from and after its passage and publication in accordance with Section 1-2-4 of the Illinois Municipal Code.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED by the City Council this ____ day of _____, _____.

AYES:

NAYS:

ABSTAINED:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this ____ day of _____, _____.

Tod Satterthwaite, Mayor

CERTIFICATE OF PUBLICATION IN PAMPHLET FORM

I, Phyllis Clark, certify that I am the duly elected and acting Municipal Clerk of the City of Urbana, Champaign County, Illinois.

I certify that on the ____ day of _____, _____, the corporate authorities of the City of Urbana passed and approved Ordinance No. _____, entitled AN ORDINANCE _____

_____, which provided by its terms that it should be published in pamphlet form.

The pamphlet form of the Ordinance was prepared, and a copy of such Ordinance was posted in the Urbana City Building commencing on the ____ day of _____, _____, and continuing for at least ten (10) days thereafter. Copies of such Ordinance were also available for public inspection upon request at the Office of the City Clerk.

DATED at Urbana, Illinois, this ____ day of _____, _____.

(SEAL)

Phyllis Clark, CITY CLERK