

ORDINANCE NO. F-0904

AN ORDINANCE AMENDING CHAPTER 42, SECTION 42-25 OF THE CODE OF ORDINANCES OF THE CITY OF WHEATON “CURFEW FOR MINORS”

WHEREAS, the Seventh Circuit Court of Appeals in *Hodgkins v. Peterson*, 355 F 2nd, 1048 (7th Ct., 2004) clarified the constitutionality of curfew ordinances or Statutes not addressing First Amendment protections; and

WHEREAS, based upon clarification provided in the Seventh Circuit Court of Appeals opinion, the Corporate Authorities of the City of Wheaton deem it necessary and appropriate to amend Chapter 42, Section 42-25 of the Code of Ordinances of the City of Wheaton; and

WHEREAS, the Corporate Authorities of the City of Wheaton, deem it necessary and in the interest of the public health, safety and welfare to continue to impose curfew on persons less than 17 years of age;

NOW THEREFORE, be it ordained by the Mayor and City Council of the City of Wheaton, County of DuPage, Illinois, that Section 42-25 of Chapter 42 of the Wheaton City Code is hereby repealed and rescinded in its entirety and replaced with a new Section 42-25 (a-e) of Chapter 42, which shall be entitled “Curfew for Minors” and which shall read as follows:

SECTION 1:

42-25(a) Definitions:

1. **Emergencies** 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, natural disaster, automobile accident, act of war, terrorism or any situation requiring immediate action to prevent serious bodily injury or loss of life.
2. **Establishment** means any privately owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.

3. **Guardian** means:

a person who is the guardian of the person of a minor by Court Order; or
a public or private agency with whom a minor has been placed by a Court.

4. **Minor** means any person under 17 years of age.

5. **Parent** means a person who is:

a natural parent, adoptive parent, or step parent of another person; or
at least 18 years of age and authorized by a parent or guardian to have the
care and custody of a minor.

6. **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,
highways, and the common areas of schools, hospitals, apartments,
houses, office buildings, and shopping malls.

7. **Remain** means to:

linger or stay; or

fail to leave premises when requested to do by an officer, owner, operator
or other person in control of the premises.

8. **Serious Bodily Injury** means bodily injury that creates a substantial risk of
death, or that causes death, serious permanent disfigurement, or protracted
loss or impairment of function of any bodily member or organ.

42-25(b) Curfew Established. It shall be unlawful for any minor to be present at
or upon any building, place, street, establishment, or roadway:

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 through Thursday inclusive
and 6:00 a.m. on the following day.

42-25(c) Permitting Violations Prohibited. It shall be unlawful for any parent,
guardian or other person to knowingly permit a minor in that persons control or custody to
violate this Ordinance.

42-25(d) Defenses. It shall be a defense to prosecution under this Section that the
minor was:

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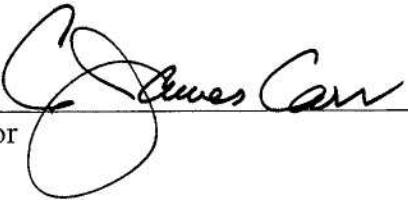
1. accompanied by the minor's parent or guardian;
2. on an errand at the direction of the minor's parent or guardian without any detours or stop;
3. in a motor vehicle involved in interstate travel;
4. engaged in an employment activity or going to or returning from an employment activity, without any detours or stop;
5. involved in an emergency;
6. on a sidewalk abutting the minor's residence or abutting the next door neighbor if the next door neighbor does not complain to the Wheaton Police Department about the minor's presence;
7. attending an official school, religious or other recreational activity supervised by adults and sponsored by any governmental body having jurisdiction within the Corporate Limits of the City of Wheaton;
8. a civic organization or similar entity that takes responsibility for the minor, or transporting the minor to and from the activity and home without any detour or stop, or any other official school, religious or other recreational activity supervised by adults and sponsored by any governmental entity having jurisdiction within the corporate boundaries of the City of Wheaton, a civic organization, or similar entity that takes responsibility for a minor;
9. 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.

42-25(e) Pre-Inquiry Citation. Before issuing a citation or making an arrest under this Section a police officer shall ask the apparent offender's age and the reason that the apparent offender is in a public place or establishment. The officer shall not issue a citation or make an arrest under this Section unless the Officer reasonably believes, based upon the totality of the circumstances, that an offense has occurred and that no defense set forth in Sub-Section D is present.

SECTION 2: That all ordinances and parts of ordinances in conflict with or inconsistent with the provisions of this ordinance are hereby repealed to the extent of any such conflict or inconsistency.

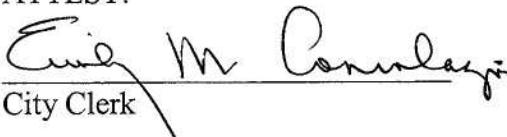
SECTION 3: That if any part of part or portion of this ordinance shall be declared invalid by a court of competent jurisdiction, such partial invalidity shall not affect the remainder of this ordinance.

SECTION 4: That this ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as is hereby authorized and directed to be done by the Mayor and City Council.



Mayor

ATTEST:



City Clerk

Ayes:

Roll Call Vote:

Councilman Mouhelis
Councilman Bolds
Councilwoman Corry
Councilman Johnson
Mayor Carr
Councilwoman Johnson
Councilman Mork

Nays:

None

Absent:

None

Motion Carried Unanimously

Passed: May 3, 2004

Published: May 4, 2004