

ORDINANCE NO. 03-452

AN ORDINANCE TO AMEND AND RE-ESTABLISH A CHILD/JUVENILE CURFEW

WHEREAS, by Ordinance No. 00-677, enacted November 6, 2000, with an effective date of December 1, 2000, the Elkhart County Commissioners established a child/juvenile curfew for the unincorporated portions of Elkhart County, Indiana, and prescribed certain definitions, offenses/violations/prohibited acts, enforcement, penalties, and other standards;

WHEREAS, since the adoption of such Ordinance, the Indiana General Assembly has revised applicable Indiana law dealing with child/juvenile curfews;

WHEREAS, since the adoption of such Ordinance, the City of Elkhart has updated and revised what is commonly known as its "Parental Responsibility for Juvenile Curfew Violations Ordinance;"

WHEREAS, the Elkhart County Commissioners wish to revise Ordinance No. 00-677 to create consistency with the Parental Responsibility for Juvenile Curfew Violations Ordinance of the City of Elkhart (Ordinance No. 4607) and with revised standards established by the Indiana General Assembly;

NOW, THEREFORE, BE IT ORDERED by the Board of Commissioners of the County of Elkhart County, Indiana THAT:

SECTION 1. DEFINITIONS.

As used within this Ordinance, the following words and phrases shall have the meanings assigned to them below:

(1) "Child" has the same meaning as "juvenile," and vice versa.

(2) "Curfew Violation" means the presence of:

(a) A child/juvenile fifteen (15), sixteen (16), or seventeen (17) years of age in a public place: (i) between 1:00 a.m. and 5:00 a.m. on Saturday or Sunday; (ii) after 11:00 p.m. on Sunday, Monday, Tuesday, Wednesday, or Thursday; or (iii) before 5:00 a.m. on Monday, Tuesday, Wednesday, Thursday, or Friday.

(b) A child/juvenile under fifteen (15) years of age in a public place: (i) after 11:00 p.m. on before 5:00 a.m. on any day.

All times being prevailing local time for Elkhart County, Indiana.

(3) “Custodian” means a parent or other person who has legal or physical custody over a child/juvenile, whether by parentage, court order, practice, or custom.

(4) “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, natural disaster, or automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

(5) “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.

(6) “Guardian” means:

(a) a person who, under court order, is the guardian of the person of a child/juvenile; or

(b) a public or private agency with whom a child/juvenile has been placed by a court.

(7) “Juvenile” means any person under 18 years of age, or the status or circumstance of being under 18 years of age.

(8) “Operator” means any individual, firm, association, partnership, company, or corporation operating, managing, or conducting any establishment. The term includes the managers or managing partners of an association or partnership or company and the officers of a corporation.

(9) “Parent” means a person who is:

(a) a natural parent, adoptive parent, or step-parent of a child/juvenile;
and

(b) at least 18 years of age and authorized by law to have the care and custody of a child/juvenile.

(10) “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, apartment houses, office buildings, transport facilities, shops, and businesses.

(11) “Remain” means to:

(a) linger or stay; or

(b) fail to leave the public place or establishment when requested to do so by a law enforcement officer of the owner, operator, or other person in control of an establishment.

(12) “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 the function of any bodily member or organ.

SECTION 2. OFFENSES/VIOLATIONS/PROHIBITED ACTS.

Each violation of a provision of this Ordinance shall be deemed a separate offense, subject to sanction, enforcement, and penalties as herein prescribed. Offenses under this Ordinance are defined as follows:

(1) A child/juvenile commits an offense/violation under this Ordinance, by virtue of a curfew violation, as defined in Section 1.

(2) It is a defense to a violation of this Ordinance if:

(a) The child/juvenile engaged in the prohibited conduct while:

(1) Accompanied by his or he parent, guardian, or custodian;

(2) Accompanied by an adult specified by his or her parent, guardian, or custodian; or

(3) Participating in, going to, or returning from:

(i) Lawful employment;

(ii) A school sanctioned activity;

(iii) A religious event;

(iv) An emergency;

(v) An activity involving the exercise of the child’s rights protected under the First Amendment to the United States Constitution or Article 1, Section 31 of the Constitution of the State of Indiana, or both, such as freedom of speech and the right of assembly.

(vi) An activity conducted by a nonprofit or governmental entity that provides recreation, education, training, or other care under the supervision of one (1) or more adults.

(4) Engaged in interstate or international travel from a location outside Elkhart County to another location outside of Elkhart County.

(b) The child/juvenile was emancipated:

(1) Under Ind. Code 31-37-1927 or Ind. Code 31-6-4-15.7 (before its repeal);

(2) By virtue of having married; or

(3) In accordance with the laws of another state or jurisdiction.

(3) A parent, guardian, or custodian of a child/juvenile commits an offense/violation under this Ordinance if he or she knowingly permits, or by insufficient control allows, the child/juvenile to commit a curfew violation by remaining in any public place or on the premises of any establishment within the unincorporated areas of Elkhart County, Indiana constituting a violation of Section 2, subsection (1) above.

(4) The owner, operator, or any employee of an establishment commits an offense/violation under this Ordinance if he or she knowingly allows a child/juvenile to commit a curfew violation by remaining upon the premises of the establishment constituting a curfew violation under Section 2, subsection (1) above, unless the owner, operator, or employee of such establishment promptly notifies the Elkhart County Sheriff's Department that a child/juvenile was present on the premises of the establishment during curfew hours (as defined herein) and that said child/juvenile refused upon request to leave.

SECTION 3. ENFORCEMENT.

That before taking any enforcement action under this Ordinance, a law enforcement officer, to include officers of the Elkhart County Sheriff's Department, shall determine the apparent offending child's/juvenile's age and reason for being in the public place or at an establishment, if reasonably possible. The law enforcement officer shall not issue a citation or make an arrest under this Ordinance unless the law enforcement officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, none of the factors referenced as parts of Section 2, subsection (2) above are present.

SECTION 4. PENALTIES.

A person who violates a provision of this Ordinance is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. Such a violation/offense shall be considered an Infraction under applicable Indiana law. Each offense shall be punishable by a fine not to exceed Five Hundred Dollars (\$500).

SECTION 5. DARE FUND.

All monies collected as fines assessed as described in this Ordinance shall be deposited to and used for the purposes permitted by the DARE Fund of Elkhart County Government, unless such shall be prohibited by law, in which circumstance such shall be deposited to and used for the purposes permitted by the General Fund of Elkhart County Government.

SECTION 6. EFFECTIVE DATE.

This Ordinance shall be in full force and effect from and after November 1, 2003, subject to its passage by the Elkhart County Commissioners, signature by the President thereof, attestation by the Elkhart County Auditor, and publication as required by Indiana law. Prior Ordinance No. 00-677 shall remain in force and effect until the effective date of this Ordinance, at which time Ordinance No. 00-677 shall be replaced by this Ordinance.

PASSED AND ENACTED by the Board of Commissioners of the County of Elkhart, Indiana, effective this 15th day of September, 2003.

BOARD OF COMMISSIONERS OF THE
COUNTY OF ELKHART, INDIANA

By _____
Philip E. Neff, President and Presiding Officer

By _____
Martin A. McCloskey

By _____
Phil R. Stiver

Attest:

Stephen J. Malone
Elkhart County Auditor