



OFFICE OF THE CITY ATTORNEY
ROCKARD J. DELGADILLO
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REPORT NO. R 0 8 - 0 2 5 3
JUL 1 8 2008

**SUPPLEMENTAL
REPORT RE:**

**DRAFT ORDINANCES AMENDING THE LOS ANGELES MUNICIPAL CODE
SECTIONS GOVERNING NIGHTTIME AND DAYTIME JUVENILE CURFEW**

The Honorable Education & Neighborhoods Committee
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 07-1433

Honorable Members:

On September 25, 2007, this Honorable Committee was presented with proposed amendments to Sections 45.03 and 45.04 of the Los Angeles Municipal Code which establish a nighttime and daytime juvenile curfew within the City. At the conclusion of the hearing, the Committee elected to hold this item in Committee and requested the City Attorney's Office to prepare a supplemental report to address certain issues which arose during the meeting.

Background

As stated in the original Council Report, dated August 8, 2007, the genesis for amendments to the existing ordinances governing curfew arose following demonstrations and protests over pending federal immigration legislation in March 2006. Some of the protest activities engaged in by juveniles occurred during hours when minors would otherwise be attending school, and the Los Angeles Police Department issued citations for violation of Los Angeles Municipal Code § 45.04 - the Daytime Curfew Ordinance. Following the issuance of those citations, this Office reviewed Sections 45.04 and 45.03, the latter governing nighttime juvenile curfew within the City. As a result of this review, the City Attorney's Office drafted certain

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amendments to both sections in order to create greater clarity within each section and codify the existing practice by which officers enforce these sections.

In May 2007, and independent of the reasons stated above, Council Member Jan Perry introduced a motion requesting the City Attorney's Office to prepare and present amendments to the City's Daytime Curfew Ordinance (L.A.M.C. § 45.04), to clarify the scope of the provision in a manner similar to that previously identified. A representative from the City Attorney's Office met with staff from Council Member Perry's office, and the ordinance presented to you reflects the product of that discussion, as well as discussions with Staff Officers from the Los Angeles Police Department.

Discussion

Many municipalities within the State have curfew laws. Some have ordinances regulating both daytime and nighttime curfew, while others have laws governing only nighttime juvenile activities. In preparing the proposed ordinance amendments, this Office reviewed ordinances from Moreno Valley, Long Beach, Santa Barbara, Monrovia, Glendale, San Francisco, San Diego and San Jose, as well as State and federal case law. The cities of Long Beach and Monrovia were highlighted during the discussion of this item, as Council Member Perry's motion alluded to the Long Beach daytime curfew ordinance. The Deputy City Attorney appearing on this matter explained as part of the presentation that Monrovia's ordinance had been examined at length in the preparation of the proposed amendments because it had previously withstood legal challenge in the case of *Harrahill v. City of Monrovia* (2002) 104 Cal.App.4th 761, rev. denied, March 2003. A brief review of the *Harrahill* decision may prove helpful to the Committee's further evaluation of the proposed ordinance.

In *Harrahill*, an individual brought a facial challenge to Monrovia's daytime curfew ordinance, enacted in 1994, on two grounds: first, that the city council could not legislate in the field of education, as authority is vested in the local school districts; and, second, that the daytime curfew ordinance was not a valid exercise of the city's police power because police power ordinances are permitted only where they do not conflict with general laws. In its analysis, the *Harrahill* Court agreed with plaintiff that the California Supreme Court has held that the State's truancy laws are educational, not penal, in nature. The Court further held that compulsory attendance/truancy enforcement is clearly within the educational power of the State, not a police power. However, the Court concluded that Monrovia's ordinance, on its face, did not seek to compel attendance or enforce truancy provisions. The ordinance does not regulate the conduct of the truant who stays home or leaves the Monrovia city limits – it only affects truants present in public in the city during hours when they are required to be in school.

The *Harrahill* Court then examined the rationale for such an ordinance. School-age minors, with certain exceptions, are required to be in school. When in school,

minors are under the supervision of adults. When a minor is absent without excuse, he or she is no longer under the watchful eye of school authorities, thereby subjecting that minor to an increased risk of being harmed or causing harm. The Monrovia City Council recognized these risks and sought to address the problem by making it unlawful for minors who are supposed to be in school to be unsupervised in a public place. This, according to the Court, was a valid exercise of the city's police powers.

Concerning the issue of whether the ordinance was preempted by the general laws, the *Harrahill* Court noted that the State Education Code provides no penalty for the first three times a minor is absent without excuse. On the fourth and subsequent absence, the minor is considered "truant" and a warning can be issued by a peace officer. Under the daytime curfew ordinance, the minor is subject to citation the first time he or she is found in violation of the ordinance. However, the Court went on to find that the court appearance to which the minor is subject under the ordinance is a noncriminal proceeding in juvenile traffic court, and the matter is heard before a referee. The fact that both laws concern the same subject matter does not itself render them contradictory or otherwise in conflict. According to the *Harrahill* Court, the "field" at issue is the regulation of off-campus juvenile activity during school hours – not truancy, and there was no indication that the Legislature sought to occupy this field. At the conclusion of the opinion, the Court noted that while the Legislature has, on many occasions since 1994, amended the State's truancy laws, it has never declared those laws to be preemptive of local ordinances such as this.

Without question, the City Council continues to have the authority to determine which provisions to include as "exemptions" to enforcement of the City's daytime curfew ordinance, and such a determination is crucial to the ultimate defensibility of the ordinance if it should become the subject of a later legal challenge. The Long Beach daytime curfew ordinance, attached hereto for your information, provides more exemptions to the general curfew rule than does Monrovia's ordinance, also attached hereto for your information. As long as the City Council acts with the intent and purpose of protecting the safety of juveniles, both from becoming victims as well as victimizing others, and the ordinance and all exemptions contained therein reflect this purpose, the risk of liability from a facial challenge to the ordinance should be minimal. "As-applied" challenges, based upon the manner in which the ordinance is enforced, will continue to be based on the facts and circumstances surrounding a specific event or citation.

The Council must consider whether the ordinance and exemptions reflect the significant governmental interest of this Body in reasonably and lawfully protecting the safety and well-being of the City's youth. In this regard, the first exemption found in both the existing ordinance and the proposal is significant, as it permits juveniles to engage in a wide variety of activities and conduct not otherwise specified in the ordinance while providing that measure of supervision that promotes the overarching objectives of the City. For example, during the original hearing on this matter, Council

Member Hahn suggested that she would not want to see the ordinance enforced against minors who are not in school during normal school hours who are engaged in expressive activity protected under the First Amendment, such as by participation in a demonstration or protest. The first exemption would allow that minor to actively participate in such an event, so long as he or she was accompanied by his or her parent, guardian, or other adult authorized by the parent or guardian who has care and custody of the minor.¹ While a separate exemption for First Amendment activity can be included, it is arguably unnecessary in light of the first exemption and, importantly, problematic from both a safety and enforcement perspective. Inclusion of a separate exemption for First Amendment activity, without a requirement of adult supervision, would possibly allow a minor to leave school unsupervised to attend an event which often times involves large numbers of persons in an unstructured crowd setting. This may increase the minor's vulnerability to injury or victimization. Further, a separate provision which did not include a "supervision" component could generate abuses by minors which could make enforcement difficult. Legally, however, such a provision is permissible.

Should you have any questions, please contact me at 213.978.8395. I will be available when you again consider this matter to answer any questions you may have.

Sincerely,

ROCKARD J. DELGADILLO, City Attorney

By 
JULIE RAFFISH
Deputy City Attorney

Attachments

¹ This exemption would also allow a teacher or other school administrator authorized by the minor's parent or guardian to accompany the minor while they engaged in this type of activity, even in the absence of the parent/guardian.

Title 9 PUBLIC PEACE, MORALS AND WELFARE**Chapter 9.58 LOITERING**

9.58.010 Prohibition against juvenile being in public place between the hours of ten p.m. until six a.m. the following day.

9.58.020 Prohibition against juvenile being in public place between the hours of eight-thirty a.m. until one-thirty p.m.

9.58.010 Prohibition against juvenile being in public place between the hours of ten p.m. until six a.m. the following day.

A. Curfew. It is unlawful for any minor under the age of eighteen (18) years to remain in or upon any "public place," as defined in Section 9.02.090, between the hours of ten p.m. until six a.m. the following day.

B. Exceptions. The provisions of subsection A of this section shall not apply when:

1. The minor is accompanied by his or her parent, guardian or other adult person having the care and custody of the minor;
2. The minor is on an errand at the direction of the minor's parent or guardian, without any detour or stop;
3. The minor is in a motor vehicle involved in interstate travel;
4. The minor is engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
5. The minor is involved in an emergency requiring immediate action to prevent serious bodily injury or loss of life;
6. The minor is on the sidewalk abutting the minor's residence;
7. The minor is attending an official school, religious, or other recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor, or the minor is going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor;
8. The minor is exercising First Amendment rights protected by the United States Constitution;
9. The minor is emancipated pursuant to law.

C. Enforcement. 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 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 under subsection B of this section is present. (Ord. C-7488 § 1, 1997; Ord. C-6503 § 1, 1988; Ord. C-5938 § 1, 1983).

9.58.020 Prohibition against juvenile being in public place between the hours of eight-thirty a.m. until one-thirty p.m.

A. Curfew. It is unlawful for any minor under the age of eighteen (18) years, who is subject to compulsory education or to compulsory continuing education, to remain in or upon any "public place," as defined in Section 9.02.090 of this code, between the hours of eight-thirty a.m. until one-thirty p.m. on days when such minor's school is in session.

B. Exceptions. The provisions of subsection A of this section shall not apply when:

1. The minor is accompanied by his or her parent, guardian or other adult person having the care and custody of the minor;
2. The minor is on an emergency errand at the direction of the minor's parent or guardian, without any detour or stop;

3. The minor is in a motor vehicle involved in interstate travel;
4. The minor is engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
5. The minor is involved in an emergency requiring immediate action to prevent serious bodily injury or loss of life;
6. The minor is going or coming to or from a medical appointment;
7. The minor has permission to leave campus for lunch or other school-related activity and has in his or her possession a valid, school-issued, off-campus permit;
8. The minor is attending an official school, religious, or other recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor, or the minor is going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor;
9. The minor is exercising First Amendment rights protected by the United States Constitution;
10. The minor is emancipated pursuant to law;
11. The minor is not required by his or her school vacation, track or curriculum schedule to be in school.

C. Enforcement. 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 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 under subsection B of this section is present. (ORD-06-0025 § 1, 2006: Ord. C-7386 § 1, 1996).

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CHAPTER 9.28 MINORS - LOITERING AND CURFEW

CHAPTER 9.28

MINORS—LOITERING AND CURFEW

Sections:

- [9.28.010](#) Curfew restrictions.
- [9.28.020](#) Curfew—Exceptions.
- [9.28.030](#) Daytime curfew.
- [9.28.040](#) Minor curfew, loitering or wilful misconduct—Cost recovery.

§ 9.28.010 CURFEW RESTRICTIONS.

It is unlawful for any minor under the age of 18 years to loiter, idle, wander, stroll, or aimlessly drive or ride about in or upon any public street, avenue, highway, road, curb area, alley, park, playground, or other public ground, public place or public building, place of amusement or eating place, vacant lot or unsupervised place between the hours of 10:00 p.m. on any day and sunrise of the immediately following day.

('83 Code, § 9.28.010) (Ord. 90-03 § 1 (part), 1990)

§ 9.28.020 CURFEW—EXCEPTIONS.

Section 9.28.010 shall not apply when:

(A) The minor is accompanied by his or her parent, legal guardian or other adult person having the legal care or custody of the minor, or by his or her spouse 18 years of age or older;

(B) The minor is on an errand directed by his or her parent or legal guardian or other adult person having the legal care or custody of the minor, or by his or her spouse 18 years of age or older;

(C) The minor is returning directly home from a public meeting, or a place of public entertainment, such as a movie, play, sporting event or school activity; or

(D) The presence of such minor in said place or places is connected with or required with respect to a business, trade, profession or occupation in which the minor is lawfully engaged.

('83 Code, § 9.28.020) (Ord. 90-03 § 1 (part), 1990; Ord. 94-16 § 3, 1994)

§ 9.28.030 DAYTIME CURFEW.

It is unlawful for any minor under the age of 18 years, who is subject to compulsory education or to compulsory continuation education to be in or upon any public street, highway, road, alley, park, playground, or other public ground, public place, public building, place of amusement, eating establishment or vacant lot during the hours of 8:30 a.m. to 1:30 p.m. on days when said minor's school is in session. This section does not apply:

(A) When the minor is accompanied by his or her parent, guardian, or other adult person having the care or custody of the minor; or

(B) When the minor is on an emergency errand directed by his or her parent or guardian or other adult person having care or custody of the minor; or

(C) When the minor is going or coming directly to or from his or her place of gainful employment or to or from a medical appointment; or

(D) To any minor who has permission to leave school campus for lunch or school-related activity and has in his or her possession a valid, school issued, off-campus permit; or

(E) When the minor is exempt by law from compulsory education or compulsory continuation education; or

(F) When the minor is authorized to be absent from his or her school pursuant to the provisions of Cal. Education Code § 48205, or any other applicable state or federal law.

('83 Code, § 9.28.030) (Ord. 99-06 § 2, 1999; Ord. 94-16 § 4, 1994)

§ 9.28.040 MINOR CURFEW, LOITERING OR WILFUL MISCONDUCT—COST RECOVERY.

(A) *Determination by court.* When, based on a finding of civil liability or criminal conviction for violations of curfew, pursuant to Cal. Welfare and Institutions Code § 625.5, daytime loitering (truancy), or wilful misconduct in violation of Cal. Welfare and Institutions Code § 602, a minor under 18 years of age is detained for a period of time in excess of one hour, and said detention required the supervision of the juvenile offender by Police Department employee (s), the parent(s) or legal guardian(s) having custody or control of said minor shall be jointly and severally liable for the cost of providing

such personnel over and above the services normally provided by said department.

(B) *Determination by Chief of Police.* As determined by the Chief of Police or his or her designee, the parent(s) or legal guardian (s) of a minor committing any public offense amounting to an act of wilful misconduct in violation of Cal. Welfare and Institutions Code § 602 where police personnel provide services relating to the detention, processing or supervision of minors that are over and above the normal services usually provided by the Monrovia Police Department, may be assessed, and billed for, the cost of providing such personnel for such services beyond those normally provided by said Department.

(C) *Appeal.* Any person receiving a bill for police services pursuant to this chapter may, within 15 days after the billing date, file a written request appealing the imposition of said charges. Any billing sent pursuant to this section shall inform the billed party of the right to appeal said billing. Any appeal regarding such billing shall be heard by the City Manager, or his or her designee, as the Hearing Officer. Within ten days after the hearing, the Hearing Officer shall give written notice of the decision to the appellant. Upon the filing of a request for an appeal, payment of the bill for the police services shall be suspended until notice of the decision of the Hearing Officer. If the appeal is denied in part or in full, all amounts due to the city shall be paid within 30 days after notice of the decision of the Hearing Officer.

('83 Code, § 9.28.040) (Ord. 94-16 § 4, 1994)

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