

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING Chapter 17, OFFENSES AND MISCELLANEOUS PROVISIONS, OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA

BE IT ORDAINED, by the City Council of the City of Fayetteville, North Carolina, that:

Section 1. Section 17-34 YOUTH PROTECTION¹

§ 17-34. Curfew established; offenses and violations.

The purpose of this article is to protect juveniles from victimization and exposure to criminal activity by establishing a curfew for juveniles under the age of 16 years and minors from the age of 16 years to 17 years in the City of Fayetteville (“City”). The "Youth Protection Ordinance" is intended to reinforce and promote the role of the parent in raising and guiding children, and promote the health, safety, and welfare of both juveniles and adults by creating an environment offering better protection and security for all concerned.

A. Definitions

For the purposes of this article, the following words and phrases shall have the following meanings:

Direct route means the shortest reasonable path of travel or a commonly used route to reach a final destination without any detour or stop along the way.

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, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or death. This term also shall include any action that is reasonably necessary in order to respond to the medical needs of a family member of the juvenile or minor regardless of whether the juvenile's or minor's action is taken in order to prevent death or serious bodily injury.

Establishment means any privately owned place of business operated for profit to which the public has access or is invited, including, but not limited to, any place of amusement or entertainment.

Guardian means a person who is court-appointed to be the guardian of a juvenile or minor.

Juvenile means any person under the age of 16 years.

Minor means any person age 16 years or 17 years of age.

Owner/operator means any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment, including the employees, members, or partners of an association or partnership and the officers of a corporation.

Parent means a person who is a natural parent, adoptive parent, foster parent, or step-parent of another person or a person to whom legal custody has been given by court order.

¹ State Law reference – authority to adopt ordinances imposing a curfew on persons of any age less than 18, N.C.G.S. 160A-198

Public place means any place that is generally open to and used by the public or a substantial group of the public, whether it be publicly or privately owned, including, but not limited to, streets, sidewalks, highways, alleys, rights-of-way, public vehicular areas and parking lots, transportation facilities, theaters, restaurants, shops, bowling alleys, schools and school grounds, places of business and amusement, playgrounds, parks, similar areas that are open to the public, and other common areas open or accessible to the public.

Remain means to linger or stay in a public place or to fail to leave the premises of an establishment when requested to do so by the owner/operator or employee of the premises.

Restricted hours means the time of night referred to herein and is based upon the prevailing standard of time, whether Eastern Standard Time or Eastern Daylight Savings Time, generally observed at that hour by the public in the City of Fayetteville, North Carolina.

B. Curfew established; offenses and violations.

A curfew applicable to juveniles or minors is established and shall be enforced as follows:

- (1) Time limits for minors. It is unlawful for any minor under the age of 18 years to be or remain upon any establishment or public place in the City between 1:00 a.m. and 5:00 a.m. on Saturday, or between 1:00 a.m. and 5:00 a.m. on Sunday, or between the hours of midnight (12:00 a.m.) and 5:00 a.m. on Monday, Tuesday, Wednesday, Thursday, or Friday.
- (2) Time limits under 16. It is unlawful for any juvenile under the age of 16 years to be or remain upon any establishment or public place in the City between 11:00 p.m. on Sunday, Monday, Tuesday, Wednesday, Thursday, Friday, or Saturday and 6:00 a.m. of the following day.
- (3) Out-of-school suspensions time limit. It is unlawful for any juvenile or minor who has been suspended from school or has failed to attend school for any reason during regular school hours, who is not in the company of a parent or guardian, to be or remain upon any establishment or public place in the City between the hours of 7:30 a.m. and 4:30 p.m. on any school day.
- (4) A parent or guardian of a juvenile or minor commits an offense if he/she knowingly permits, or by insufficient control allows, the juvenile or minor to remain in any public place or on the premises of any establishment within the City during the restricted hours. The term "knowingly" includes knowledge that a parent should reasonably be expected to have concerning the whereabouts of a juvenile or minor in that parent's legal custody. This requirement is intended to hold a neglectful or careless parent up to a reasonable community standard of parental responsibility through an objective test. It shall, therefore, be no defense that a parent was completely indifferent to the activities or conduct or whereabouts of such juvenile or minor.
- (5) The owner, operator, or any employee of an establishment commits an offense if he/she knowingly allows a juvenile or minor to remain upon the premises of the establishment during the restricted hours. The term "knowingly" includes

knowledge that an operator or employer should reasonably be expected to have concerning the patrons of an establishment. The standard for "knowingly" shall be applied through an objective test: whether a reasonable person in the operator's or employee's position should have known that the patron was a juvenile or minor in violation of this article.

- (6) It shall be a violation of this article for any person 16 years of age or older to aid or abet a juvenile in the violation of subsection (2).
- (7) It shall be a violation of this article for a parent or guardian to refuse to take custody during the restricted hours of a juvenile or minor for whom the parent or guardian is responsible.

C. Exceptions

(a) A juvenile or minor who is in a public place or establishment during the restricted hours shall not be in violation of this article if the juvenile or minor is:

- (1) Accompanied by his/her parent or guardian.
 - (2) Accompanied by an adult 19 years of age or older authorized by the parent or guardian of such juvenile or minor to take the parent's or guardian's place in accompanying the juvenile or minor for a designated period of time and purpose within an area specified by the juvenile's or minor's parent or guardian.
 - (3) On an errand, using a direct route, at the direction of the juvenile's or minor's parent or guardian until the hour of 12:30 a.m.
 - (4) In a motor vehicle with parental consent engaged in interstate travel through the City or originating or terminating in the City.
 - (5) Traveling in a motor vehicle with a parent or guardian or traveling in a motor vehicle with an adult 19 years of age or older authorized by the parent or guardian of such juvenile or minor to take the parent or guardian's place in accompanying the juvenile or minor for a designated period of time and purpose within a specified area.
 - (6) Engaged in a lawful employment activity or using a direct route to or from a place of employment.
 - (7) Reacting or responding to an emergency.
 - (8) Attending or traveling to or from, by direct route, an official school, religious, or recreational activity that is supervised by adults and sponsored by a public or private school, the City, or other governmental entity, a civic organization, or another similar entity that accepts responsibility for the juvenile or 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.
 - (10) Married or emancipated.
- (b) Special permit.

- (1) When necessary nighttime activities of a juvenile or minor may be inadequately provided for by other provisions of this article, application may be made in writing to the Chief of Police, or their designee, either for a regulation as provided in subsection (b)(2) or for a "special permit," as the circumstances warrant. The application shall be in writing, signed by a juvenile or minor and by a parent of the juvenile or minor, if feasible, stating:
 - a. The name, age, and address of the juvenile or minor and the telephone number of a parent;
 - b. The height, weight, sex, color of eyes and hair, and other physical characteristics of the juvenile or minor;
 - c. The necessity that requires the juvenile or minor to remain upon a public place during the restricted hours;
 - d. The public place; and
 - e. The beginning and ending of the period of time involved by date and hour.

Upon receipt of the application, the Chief of Police, or their designee, may issue a written permit for the juvenile's or minor's use of the public place at such hours as, in the opinion of the Chief of Police, may be reasonable, necessary, and consistent with the purpose of this article.

- (2) When authorized by regulation issued by the Chief of Police, or their designee, establishing special permit exceptions [shall be established and are] to be handled as set forth in subsection (b)(1). Normally such regulation by the Chief of Police, or their designee, permitting use of public places should be issued sufficiently in advance to permit appropriate publicity through news media and through other agencies, such as the schools. It shall define the activity; the scope of the use of the public places permit; the period of time involved, not to extend more than one hour beyond the time for termination of the activity; and the reason for finding that the regulation is reasonably necessary and is consistent with the purposes of this article.
- (3) For the denial of a special permit, the parent or guardian ad litem of the juvenile or minor may appeal within 30 days to any district court judge for de novo review.

D. Defense

It is a defense to prosecution under subsection 17-34(B)(4) that the owner, operator, or employee of an establishment promptly notified law enforcement officers that a juvenile or minor was present on the premises of the establishment during the restricted hours and refused to leave.

E. Enforcement

- (a) Before taking any enforcement action under this article, a law enforcement officer shall ask the apparent offender's age and reason for being in the public place or establishment during restricted hours.

(b) The law enforcement officer shall not prepare a juvenile arrest report, issue a citation, or make an arrest under this article unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no exception or defense in section 17-34(c) is present.

F. Penalties

(a) A juvenile who violates any provision of this article is subject to being adjudicated delinquent. The court may, in its discretion, impose any dispositional alternative(s) that are provided in the North Carolina Juvenile Code for any juvenile who is delinquent.

(b) Any person other than a juvenile who violates any provision of this article shall be guilty of a misdemeanor and shall be subject to a fine not to exceed \$100.00 and imprisonment in the discretion of the court in accordance with N.C.G.S. 14-4.