

CITY OF DOVER PROPOSED ORDINANCE #2012-06

1 **BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DOVER, IN COUNCIL**
2 **MET:**

3 That the Dover Code of Ordinances be amended by inserting a new Chapter 59 - Juvenile Curfew, to read
4 as follows:

5 Chapter 59 - JUVENILE CURFEW

6 Sec. 59-1. - Definitions.

7 When not inconsistent with the context, words used in the present tense include the future, words
8 in the plural number include the singular, and words in the singular number include the plural. The word
9 "shall" is always mandatory and not merely directory. The following words, terms and phrases, when used
10 in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly
11 indicates a different meaning:

12 *City* means the City of Dover, Delaware, with administrative offices at 15 Loockerman Plaza, Dover,
13 Delaware.

14 *Emergency* means an unforeseen combination of circumstances or the resulting state that calls for
15 immediate action. The term includes, but is not limited to, a fire, natural disaster, automobile accident, or
16 any situation requiring immediate action to prevent serious bodily injury or loss of life.

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

19 *Juvenile or Minor* means any unemancipated person under the age of 17 or, in equivalent phrasing
20 often herein employed, any person 16 or fewer years of age.

21 *Operator* means any individual, firm, association, partnership, or corporation operating, managing,
22 or conducting any establishment. The term includes the members or partners of an association or partnership
23 and the officers of a corporation.

24 *Parent* means any person having legal custody of a juvenile:

25 (1) As a natural or adoptive parent.

26 (2) As a legal guardian.

27 (3) As a person who stands in loco parentis.

28 (4) As a person to whom legal custody has been given by court order.

29 *Public Place* means any place to which the public or a substantial group of the public has access and
30 includes, but is not limited to, streets, common areas of schools, shopping centers, parking lots, parks,
31 playgrounds, transportation facilities, theaters, restaurants, shops, bowling alleys, taverns, cafes, arcades,
32 and similar areas that are open to the use of the public. As a type of public place, a street is a way or place,
33 of whatever nature, open to the use of the public as a matter of right for purposes of vehicular travel or, in
34 the case of a sidewalk thereof, for pedestrian travel. "Street" includes that legal right-of-way, including, but
35 not limited to, the cartway of traffic lanes, the curb, the sidewalks, whether paved or unpaved, and any grass
36 plots or other grounds found within the legal right-of-way of a street.

37 *Remain* means to stay behind, to tarry, and to stay unnecessarily in a public place, including the
38 congregating of groups (or of interacting minors) totaling four or more persons in which any juvenile
39 involved would not be using the streets for ordinary or serious purposes such as mere passage or going
40 home, or to fail to leave the premises of an establishment when requested to do so by a police officer or the
41 operator of an establishment. To implement this provision with additional precision and precaution,
42 numerous exceptions are expressly defined in this chapter. More exceptions become available with a
43 juvenile's increasing years and advancing maturity as appropriate in the interest of reasonable regulation.

44 *Time of Night* means based upon the prevailing standard of time, whether Eastern standard time or
45 Eastern daylight savings time, generally observed at that hour by the public in the city, prima facie the time
46 then observed in the city administrative offices and police station.

47 *Years of Age* means continues from one birthday, such as the 16th, to (but not including the day of)
48 the next, such as the 17th birthday, making it clear that 16 or fewer years of age is herein treated as
49 equivalent to the phrase "under 17 years of age." Similarly, for example, 11 or fewer years of age means
50 "under 12 years of age."

51 Sec. 59-2. - Curfew established.

52 (a) *School year curfew.* It shall be unlawful for any person 16 years or fewer of age (under 17) to be or
53 remain in or upon a public place within the City of Dover during the Caesar Rodney/Capital School
54 District designated school year for the period ending at 6:00 a.m. and beginning:

55 (1) At 12:00 midnight on Friday and Saturday nights; and

56 (2) At 11:00 p.m. on all other nights.

57 (b) *Summer curfew.* It shall be unlawful for any person 16 years or fewer of age (under 17) to be or remain
58 in or upon a public place within the City of Dover during the Caesar Rodney/Capital School District
59 designated summer break for the period ending at 6:00 a.m. and beginning:

60 (1) At 1:00 a.m. on Friday and Saturday nights; and

61 (2) At 12:00 midnight on all other nights.

62 Sec. 59-3. - Exceptions.

63 (a) The following shall constitute valid exceptions to the operation of this chapter:

64 (1) *Accompanied by parent.* When a juvenile is accompanied by a parent of such juvenile.

65 (2) *Accompanied by authorized adult.* When a juvenile is accompanied by an adult authorized by
66 a parent of such juvenile to take said parent's place in accompanying said juvenile for a
67 designated period of time and purpose within a specified area.

68 (3) *Errand directed, in writing, by parent.* When the juvenile is on an errand as directed by his/her
69 parent, provided that such juvenile shall have on his/her person a written note, signed by the
70 juvenile's parent, stating:

71 a. The date and time that the note was written (which shall not be more than 24 hours before
72 the time of the errand);

73 b. The name of the juvenile;

74 c. The name, address, and telephone number of the parent; and

75 d. The specific errand directed by the parent.

76 (4) *Emergency.* When a juvenile is assisting in an emergency, including, by way of example and not
77 in limitation, responding as a member of a volunteer fire company to a fire company or
78 paramedic call.

79 (5) *First amendment rights.* When a juvenile is exercising first amendment rights protected by the
80 United States Constitution, such as the free exercise of religion, freedom of speech, and the right
81 of assembly, by first delivering, to the person designated by the city's chief of police to receive
82 such information, a written communication, signed by the juvenile and countersigned, if
83 practicable, by a parent of the juvenile, with his/her home address and telephone number,
84 specifying when, where, and in what manner the juvenile will be in a public place during hours
85 when this chapter is applicable to said minor in the exercise of a first amendment right specified
86 in such communication.

87 (6) *Reasonable necessity.* In case of reasonable necessity for the juvenile remaining in a public place,
88 but only after the juvenile's parent has communicated to the chief of police or the person
89 designated by the chief of police to receive such notifications the facts establishing the
90 reasonable necessity relating to a specified public place at a designated time for a described
91 purpose, including points of origin and destination. A copy of the communication, or of the
92 police record thereof, duly certified by the chief of police to be correct, with an appropriate
93 notation of the time it was received and of the names and addresses of the parent and juvenile,
94 shall be admissible evidence.

95 (7) *On own or neighbor's property.* When a juvenile is on the sidewalk or property where the
96 juvenile resides, or on either side of or across the street from the place where the juvenile resides,
97 and the adult owner or resident of that property has given permission for the juvenile to be there.

- 98 (8) *Returning home within one hour of official activity.* When a juvenile is returning home from, and
99 within one hour of, the termination or closing of an official school, religious, or other
100 recreational activity supervised by adults, sponsored by the City of Dover, a recognized
101 charitable, benevolent, or civic association, or a similar entity that takes responsibility for the
102 minor.
- 103 (9) *Special permit (individual).* When authorized by special permit from the chief of police carried
104 on the person of the juvenile thus authorized, as follows:
- 105 a. When necessary nighttime activities of a juvenile may be inadequately provided for by other
106 provisions of this chapter, then recourse may be had to the chief of police, either for a
107 regulation as provided in subsection (a)(10) or for a special permit as the circumstances
108 warrant.
- 109 b. Upon a finding of undue hardship and reasonable necessity for the use of a public place to
110 the extent warranted by a written application signed by a juvenile and by a parent of the
111 juvenile, if feasible, stating: the name, age, and address of the juvenile; the name, address,
112 and telephone number of a parent thereof; the height, weight, sex, color of eyes and hair, and
113 other physical characteristics of the juvenile; the necessity that requires the juvenile to remain
114 upon a public place during the curfew hours otherwise applicable and the undue hardship that
115 will result if such permit is not granted; the public place; and the beginning and ending of
116 the period of time involved, by date and hour, the chief of police may grant a permit, in
117 writing, for the juvenile's use of a public place at such hours as in the opinion of the chief of
118 police may reasonably be necessary and consistent with the purposes of this chapter. In an
119 emergency, this may be handled by prior telephone or other effective communication, with
120 a corresponding record being made contemporaneously by the chief of police or by the
121 person designated by the chief of police to act on his/her behalf in an emergency at the police
122 station.
- 123 (10) *Special regulation (group).* When authorized by regulation issued by the chief of police in other
124 similar cases of reasonable necessity, similarly handled but adapted to reasonably necessary
125 nighttime activities of more juveniles than can readily be dealt with on an individual special
126 permit basis, but only where such juveniles will be under the active supervision of adults
127 responsible for such juveniles. Normally such regulation by the chief of police permitting use
128 of public places should be issued sufficiently in advance to permit appropriate publicity through
129 news media and through other agencies, such as the schools, and shall define the activity, the
130 scope of the use of the public places permitted, the period of time involved, not to extend more
131 than one hour beyond the time for termination of the activity, and the reason for finding that the
132 regulation is reasonably necessary and is consistent with the purposes of this chapter.
- 133 (11) *Employment necessity.* When the juvenile is legally employed, going to or returning home from
134 employment, and carries a certified card of employment, renewable each calendar month when
135 the current facts so warrant, dated or reissued not more than 45 days previously, signed by the
136 parent and employer and briefly identifying the juvenile, the addresses and telephone numbers
137 of the juvenile's home and place of employment, and the juvenile's hours of employment. The
138 city shall prepare a form to be used by employers for purposes of this subsection.

139 (12) *Interstate or intrastate travel.* When the juvenile is, with parental consent, engaged in normal
140 interstate or intrastate travel through the city or originating or terminating in the city.

141 (13) *Married.* When the juvenile is married or has been married pursuant to state law.

142 (14) *Operator of establishment.* In the case of an operator of an establishment, when the operator has
143 notified the police that a juvenile was present on the premises of the establishment during curfew
144 hours and refused to leave.

145 (b) *Continuing consideration of exceptions.* Each of the foregoing exceptions and their several limitations,
146 such as provisions for notification, are severable, as hereinafter provided but here reemphasized, and
147 will be considered by Council when warranted by future experience.

148 Sec. 59-4. - Parental responsibility.

149 (a) The foregoing exceptions to the operation of this chapter shall act only to create a waiver of
150 enforcement and affirmative defense(s) to such enforcement. By authorizing such exceptions, neither
151 the city nor any member of the police department shall assume any affirmative obligation or duty to
152 supervise the well-being of any juvenile acting pursuant to such authorized exception.

153 (b) It shall be unlawful for a parent having legal custody of a juvenile knowingly to permit or by inefficient
154 control to allow the juvenile to remain in any city public place under circumstances not constituting
155 an exception to, or otherwise beyond the scope of, this chapter. The term "knowingly" includes
156 knowledge that a parent should reasonably be expected to have concerning the whereabouts of a
157 juvenile in that parent's legal custody. This requirement is intended to hold a neglectful or careless
158 parent up to a reasonable community standard of parental responsibility through an objective test. It
159 shall, therefore, be no defense that a parent was completely indifferent to the activities or conduct or
160 whereabouts of such juvenile.

161 (c) It shall be unlawful for any parent to knowingly (as defined above) provide any false authorization,
162 information or certification, written or verbal, to the Dover police department in order to obtain an
163 exception to the operation of this chapter under Sec. 59-3 hereof.

164 Sec. 59-5. - Operator responsibility.

165 It shall be unlawful for any operator of an establishment to knowingly permit a juvenile to remain at the
166 establishment under circumstances not constituting an exception to, or otherwise beyond the scope of, this
167 chapter. The term "knowingly" includes knowledge that an operator should reasonably be expected to have
168 concerning the patrons of the establishment. The standard for "knowingly" shall be applied through an
169 objective test: whether a reasonable person in the operator's position should have known that the patron was
170 a juvenile in violation of this chapter.

171 Sec. 59-6. - Enforcement.

172 (a) If a police officer reasonably believes that a juvenile is in a public place in violation of this chapter,
173 the officer shall notify the juvenile that he/she is in violation of this chapter and shall require the
174 juvenile to provide his/her name, address, and telephone number and how to contact his/her parent or

- 175 guardian. In determining the age of the juvenile and in the absence of convincing evidence, such as
176 a birth certificate, a police officer shall, in the first instance of violation of the chapter, use his/her best
177 judgment in determining age.
- 178 (b) The police officer shall issue the juvenile a written warning that the juvenile is in violation of this
179 chapter and order the juvenile to go promptly home. The chief of police shall send the parent or
180 guardian of the juvenile written notice of the violation pursuant to subsection (f) hereof.
- 181 (c) Police procedures shall constantly be refined in the light of experience and may provide that the police
182 officer may deliver to a parent or guardian thereof a juvenile under appropriate circumstances; for
183 example, a juvenile of tender age, near home, whose identity and address may readily be ascertained
184 or are known.
- 185 (d) Notwithstanding subsection (b) of this section, when a juvenile has received one previous written
186 warning for violation of this chapter or a police officer has reasonable grounds to believe that the
187 juvenile has engaged in delinquent conduct, the procedure shall then be to take the juvenile to the
188 police station where a parent or guardian shall immediately be notified to come for the juvenile,
189 whereupon the parent or guardian and the juvenile shall be questioned. This is intended to permit
190 ascertainment, under constitutional safeguards, of relevant facts and to centralize responsibility in the
191 person designated there and then on duty for accurate, effective, fair, impartial, and uniform
192 enforcement and recording, thus making available experienced personnel and access to information
193 and records.
- 194 (e) When a parent or guardian, immediately called, has come to take charge of the juvenile and the
195 appropriate information has been recorded, the juvenile shall be released to the custody of such parent.
196 If the parent cannot be located or fails to take charge of the juvenile, then the juvenile shall be released
197 to the juvenile authorities, except to the extent that, in accordance with police regulations approved
198 in advance by juvenile authorities, the juvenile may temporarily be entrusted to an adult, neighbor, or
199 other person who will on behalf of a parent or guardian assume the responsibility of caring for the
200 juvenile pending the availability or arrival of a parent or guardian.
- 201 (f) In the case of a first violation of this chapter by a juvenile, the chief of police shall, by certified mail,
202 send to a parent or guardian written notice of the violation, with a warning that any subsequent
203 violation will result in full enforcement of this chapter, including enforcement of parental
204 responsibility and of applicable penalties.
- 205 (g) For the first violation of this chapter by an operator of an establishment who permits a juvenile to
206 remain on the premises, a police officer shall issue a written notice of the violation with a warning that
207 any subsequent violation will result in full enforcement of the chapter, including enforcement of
208 operator responsibility and of applicable penalties.
- 209 (h) In any event the police officer shall, within 24 hours, file a written report with the chief of police or
210 shall participate, to the extent of the information for which he/she is responsible, in the preparation of
211 a report on the curfew violation. It is not the intention of this section to require extensive reports that
212 will prevent police officers from performing their primary police duties. The reports shall be as simple
213 as is reasonably possible and may be completed by police department personnel other than sworn
214 police officers.

215 Sec. 59-7. - Violations and penalties.

216 (a) *Parents.*

217 (1) *Offenses by the parent.* If, after the warning notice pursuant to Sec. 59-6 of a first violation by
218 a juvenile, a parent violates Sec. 59-4 (in connection with a second violation by the juvenile), this
219 shall be treated as a first offense by the parent. For offenses by a parent, the fines shall be as
220 provided for in Appendix F - Fees and Fines. [First offense by a parent - \$50, and for each
221 subsequent offense by a parent the fine shall be increased by an additional \$20: e.g., \$70 for the
222 second offense and \$90 for the third offense.[Locate in Appendix F] Any court of competent
223 jurisdiction, upon finding a parent guilty, shall sentence the parent to pay this fine and the cost
224 of prosecution.

225 (2) *Personnel costs.* The parent or legal guardian having custody of a juvenile subject to this section
226 shall be liable for all costs incurred by the City of Dover for providing personnel to remain in the
227 company of a juvenile who has been detained as a curfew violator if the parent or guardian does
228 not pick up the juvenile within one hour after receiving notice from the city that the city is
229 detaining the juvenile for a curfew violation. The amount to be paid by the parent or guardian
230 shall be as provided for in Appendix F - Fees and Fines. [Locate in Appendix F] [based on the
231 hourly wage of the city employee who is assigned to remain with the juvenile plus the cost of
232 benefits for that employee.]

233 (3) The parent or legal guardian having custody of a juvenile subject to this section shall be liable
234 for any fine or condition of restitution or reparation imposed by a court upon a curfew violator,
235 provided that the curfew violator has not paid the fine or made restitution or reparation within
236 the time ordered by the court and further provided that the parent or legal guardian has been
237 made a party defendant in all enforcement proceedings against the curfew violator and shall be
238 served with all citations, summons, complaints, notices, and other documents required to be
239 served on the curfew violator defendant.

240 (b) *Juveniles.* Any juvenile who shall violate any of the provisions of this chapter more than three times
241 shall be reported by the chief of police to the juvenile authorities as a juvenile in need of supervision,
242 and the chief of police may proceed to file such charges with the courts as he/she may deem
243 appropriate.

244 (c) *Operators.* If, after the warning notice pursuant to Sec. 59-6 of a violation of this chapter, an operator
245 of an establishment violates Sec. 59-5 a second time, this shall be treated as a first offense by the
246 operator. For offenses by an operator, the fines shall be as provided for in Appendix F - Fees and
247 Fines. [Locate in Appendix F] [\$50, and for each subsequent offense by an operator the fine shall be
248 increased by an additional \$20: e.g., \$70 for the second offense and \$90 for the third offense.]

249 (d) *False certification.* Any parent convicted of knowingly providing any false authorization, information
250 or certification, written or verbal, to the Dover police department in violation of Sec. 59-4(c) shall pay
251 a fine as provided for in Appendix F - Fees and Fines. [Locate in Appendix F] [\$50 for the first
252 offense, and for each subsequent offense the fine shall be increased by an additional \$20, plus costs.]

253 Sec. 59-8. - Advisory opinions.

254 The city manager, after consultation with the city solicitor, is hereby authorized to give advisory opinions,
255 in writing, which shall be binding and shall be adhered to by the police until the chapter is amended in such
256 respect, interpreting terms, phrases, parts, or any provisions. Normally such advisory opinions shall be in
257 response to good faith, signed letters addressed to the city manager or to a member of the city council
258 questioning this chapter as ambiguous, having a potentially chilling effect on constitutional rights
259 specifically invoked or otherwise invalid, in all three categories with respect to proposed conduct definitely
260 described. This administrative remedy must be exhausted prior to presenting to any court a question in any
261 of the three categories. The city council does not intend a result through the enforcement of this chapter that
262 is absurd, impossible of execution, or unreasonable. Council intends that the chapter be held inapplicable
263 in such cases if anywhere its application would be unconstitutional under the Constitution of the State of
264 Delaware or the Constitution of the United States of America.

265 Sec. 59-9. - Continuing evaluation.

266 The city council shall continue its evaluation and updating of this chapter through methods including but
267 not limited to the following:

- 268 (a) Within six months after the implementation of this chapter, the chief of police shall provide the city
269 council with a report concerning the effect of this chapter on crimes committed by and against minors
270 and of the number of warnings issued and arrests of minors, parents, and operators hereunder and such
271 other information as council may request.
- 272 (b) On a regular basis, the city council shall receive informal reports of all exceptional cases hereunder
273 of reasonable necessity, the notices of school and other activities, the special permits and the
274 regulations authorized above, and the advisory opinions for consideration by the council in further
275 updating and continuing evaluation of this chapter.

276 Sec. 59-10. - Notice.

277 Notice of the existence of this chapter and of the curfew regulations established by it shall be posted in, on,
278 or about such public or quasi-public places as may be determined by the city manager or the police
279 department in order that the public may be constantly informed of the existence of this chapter and its
280 regulations.

281 City of Dover
282 Juvenile Curfew Ordinance
283 Employment Certificate

284 Pursuant to Sec. 59-3(a) - 11 of the City of Dover Juvenile Curfew Ordinance, this shall certify that:

285 _____
286 Juvenile's name
287 _____
288 Address
289 _____
290 Address

291 is currently employed by:

292 _____
 293 Employer's name

294 _____
 295 Employer's address

296 _____
 297 Employer's address

298 _____
 299 Employer's telephone no.

300 and that he/she is scheduled to work during the following hours:

301 Sun. _____ Mon. _____ Tue. _____ Wed. _____

302 Thur. _____ Fri. _____ Sat. _____

303 _____
 304 Parent's name (print)

305 _____
 306 Parent's signature

 Employer's signature

307 BE IT FURTHER ORDAINED THAT Appendix F - Fees and Fines, be amended by inserting the text
 308 indicated in bold, blue, italics, as follows:

309 <i>Chapter 59 - Juvenile Curfew</i>			
310 <i>Sec. 59-7</i>	<i>Violations and penalties.</i>		
	<i>Subsec. (a)(1)</i>	<i>Offenses by the parent</i>	<i>First offense by a parent - \$50; each subsequent offense by a parent shall be increased by an additional \$20; e.g., \$70 for the second offense and \$90 for the third offense.</i>

	<i>Subsec. (a)(2)</i>	<i>Personnel costs incurred by the City of Dover for providing personnel to remain in the company of a juvenile who has been detained as a curfew violator if the parent or guardian does not pick up the juvenile within one hour after receiving notice from the city that the city is detaining the juvenile for a curfew violation.</i>	<i>The hourly wage and cost of benefits of the city employee assigned to remain with the juvenile</i>
	<i>Subsec. (c)</i>	<i>Operators - Any operator who knowingly permits a juvenile to remain at the establishment under circumstances not constituting an exception</i>	<i>\$50 for first offense by an operator; for each subsequent offense the fine shall be increased by an additional \$20: e.g., \$70 for the second offense and \$90 for the third offense.</i>
	<i>Subsec. (d)</i>	<i>False certification - Any parent convicted of knowingly providing any false authorization, information or certification, written or verbal, to the Dover police department in violation of Sec. 59-4(c)</i>	<i>\$50 for the first offense; for each subsequent offense the fine shall be increased by an additional \$20, plus costs.</i>

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ADOPTED: *
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SYNOPSIS

The proposed ordinance would establish a juvenile curfew.

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(SPONSORS: HARE, ANDERSON, AND BONAR)

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Actions History
Mar. 12, 2012 - Scheduled for First Reading by Council
Feb. 29, 2012 - Considered by the Safety Advisory and Transportation Committee