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3 CITY OF CUYAHOGA FALLS, OHIO

4  
5 ORDINANCE NO. 45 - 2011

6  
7 AN ORDINANCE AMENDING SECTIONS 516.01, 516.02,  
8 516.03 and 516.04 OF CHAPTER 516, PART FIVE OF THE  
9 CODIFIED ORDINANCES, ENACTING NEW SECTIONS  
10 516.05 AND 516.06 THEREOF, RELATING TO MINORS'  
11 CURFEW, AND DECLARING AN EMERGENCY  
12

13 WHEREAS, it is the intent of this Council to protect minors in this city from harm  
14 and victimization, to promote the safety and well-being of minors residing in and  
15 visiting this city, and to reduce the incidence of crime and violence committed by and  
16 against minors, and  
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18 WHEREAS, the Council has received empirical evidence of the need to create a  
19 special curfew zone for the purpose of assisting law enforcement officers in reducing  
20 crimes of violence and victimization of juveniles in certain portions of the City, and  
21

22 WHEREAS, the Council has received empirical evidence of inadequate parental  
23 supervision giving rise to unsafe gatherings of juveniles under circumstances where  
24 they are susceptible to victimization, and  
25

26 WHEREAS, the evidence received by Council adequately demonstrates a compelling  
27 governmental interest in the establishment of appropriate civil penalties for curfew  
28 violations, the intent of which is 1) to provide an incentive to parents to undertake  
29 proper supervision and control of their minor children, 2) to compensate the City for  
30 increased police expenditures incurred in addressing unsafe gatherings and  
31 victimization of juvenile curfew violators, and 3) to compensate the City for providing  
32 necessary custody and supervision of detained minors, for their protection, until  
33 retrieval by their parents, and  
34

35 WHEREAS, the Ohio Supreme Court has affirmed the constitutional authority of  
36 municipalities to enact civil penalty systems for use in the enforcement of local police,  
37 sanitary and other similar regulations, as are not in conflict with general laws  
38 (*Mendenhall, et al. v. City of Akron, et al.* (2008), 117 Ohio St. 3d 33),  
39

40 NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cuyahoga Falls,  
41 County of Summit, and State of Ohio, that:  
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43 Section 1. Sections 516.01, 516.02, 516.03 and 516.04 of the Codified Ordinances  
44 of the City of Cuyahoga Falls are hereby amended to read in full as follows (new text  
45 underlined; deleted text in ~~strikethrough~~):  
46

47 516.01 DEFINITIONS.

48  
49 For the purposes of this chapter only, the following terms, phrases, words and their  
50 derivations have the meaning given herein.  
51

52 (a) "Minor" means any person under the age of eighteen years or any person  
53 seventeen or less years of age.  
54

55 (b) "Parent" means any person having legal and physical custody of a minor:

- 56 (1) As a natural or adoptive parent,  
57 (2) As a legal guardian,  
58 (3) As a person who stands in loco parentis, or  
59 (4) As a person to whom legal and physical custody has been given by order of  
60 court.

61  
62 (c) "Public place" means any street, highway, alley or right of way, to include  
63 sidewalks, any park, playground, ground, place or building open to the public; any  
64 privately or publicly owned place of amusement, entertainment or public  
65 accommodation, to including parking lots and any other areas adjacent thereto; and  
66 any vacant lot or land or, without the consent of the owner, any private property.

67  
68 (d) "Responsible Parent" means a person who, as a Parent, is subject to the duty  
69 imposed by Subsection 516.04(a) on the date and time that the Parent's minor child is  
70 found in violation of the curfew hours established in this Section.

71  
72 (e) "Special Curfew Area" shall mean the area bounded by the following known  
73 landmarks: Beginning at the Cuyahoga River at the easterly extension of Oakwood  
74 Avenue, then west to 4<sup>th</sup> Street, south to Stow Avenue, east to 2<sup>nd</sup> Street, south to  
75 Broad Blvd., east along Broad Blvd. to its intersection with the Cuyahoga River, then  
76 north along said river to the place of beginning, inclusive of all mentioned public rights-  
77 of-way.

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79 (d) (f) "Time of night", is based upon the prevailing standard of time, generally  
80 observed at that hour by the public in the City, prima facie the time then observed in  
81 the City Administrative Offices and Police Station.

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83 (e) (g) "Year of age" continues from one birthday, such as the seventeenth, to but  
84 not including the day of the next, such as the eighteenth birthday.

85  
86 516.02 CURFEW HOURS.

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88 (a) Subject to the provisions of subsection (b) below, No person under eighteen  
89 years of age shall be in or upon any public place during the period ending at 5:00 a.m.  
90 and beginning at 11:00 p.m. daily except Friday and Saturday when such curfew hour  
91 shall begin at 12:00 midnight, and ending at 5:00 a.m. the following morning.

92  
93 (b) No person under eighteen years of age who is not a lawful resident of the  
94 Special Curfew Area shall be in or upon any public place in the Special Curfew Area  
95 during the period beginning at 8:00 p.m. daily and ending at 5:00 a.m. the following  
96 morning.

97  
98 (c) The Mayor may suspend the operation of subsection (b) of this section to  
99 allow unaccompanied minors to attend events or programming designed for children or  
100 youth under eighteen years of age, provided that the event or programming is free of  
101 alcoholic beverages. If held on City-owned property, the rental agreement entered into  
102 between the City and the event sponsor for use of the property may contain such  
103 further conditions as required to ensure the safety of unaccompanied minors. Any  
104 suspension authorized by the Mayor shall be issued in writing and shall specify the  
105 dates to which it applies.

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107 (d)(b) Any minor violating the provisions of this chapter shall be guilty of an act  
108 of unruliness.

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110 516.03 EXCEPTIONS.

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In the following exceptional cases, proof of which shall be an affirmative defense, a minor in or upon a public place during the nocturnal hours for which Section 516.02 is intended to provide the maximum limits of regulation shall not be considered in violation of this chapter:

(a) When accompanied by a parent of such minor.

(b) When accompanied by an adult authorized by a parent of such minor to take the parent's place in accompanying the minor for a designated period of time and purpose within a specified area.

(c) When 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.

~~(d) In case of reasonable necessity.~~ When involved in an emergency other than one occurring in the Special Curfew Area or when engaged, with his or her parent's permission, in an emergency errand.

~~(e) When the minor is on the a public sidewalk within line of sight of the place where such minor resides, with the knowledge and consent of a parent who is present at such place, or on the sidewalk of either next door neighbor not communicating an objection to the police officer.~~

(f) When returning home by a direct route from, and within thirty minutes of, the termination of a school activity, or an activity of a religious, or other voluntary association.

(g) When returning home by a direct route from, and within thirty minutes of, the termination of a period of employment and the minor carries a certified card of employment, briefly identifying the minor, the address of his home and the place of employment and his hours of employment.

(h) When attending, and while going directly to or from a controlled-admission recreation venue within the Special Curfew Area, any lawful entertainment with the knowledge and consent of the parent.

#### 516.04 PARENTAL RESPONSIBILITY; CIVIL PENALTY

~~(a) No parent having custody of a minor shall knowingly permit or by insufficient control allow such minor to be in or upon any public place under circumstances not constituting an exception to, or otherwise beyond the scope of this chapter. "Knowingly" includes knowledge which a parent should reasonably be expected to have concerning the whereabouts of a minor in that parent's custody. It is intended to continue to keep neglectful or careless parents up to a reasonable community standard of parental responsibility through an objective test. It shall be no defense that a parent was completely indifferent to the activities or conduct or whereabouts of such minor. It shall be the duty and responsibility of each parent of a minor to ensure that the minor does not violate Section 516.02 of this Chapter.~~

~~(b) It shall be an affirmative defense to this section that such parent has within thirty days preceding the alleged violation filed or cause to be filed a complaint against such minor under Ohio R.C. 2151.27. When a minor is detained as a result of a violation of Section 516.02, a violation of subsection (a) of this Section will be deemed to have occurred. The law enforcement officer detaining the minor shall initially determine the identity of the responsible parent or parents, who shall be deemed responsible for failure to comply with subsection (a) of this Section. This determination may be challenged as to either or both parents at a proceeding held pursuant Section 516.06.~~

~~(c) A parent who violates this section is guilty of a minor misdemeanor for the first offense and a misdemeanor of the fourth degree for each subsequent offense. Each violation of subsection (a) of this section shall be deemed a noncriminal infraction for~~

166 which a civil penalty of fifty dollars (\$50) shall be assessed against the responsible  
167 parent, or if both parents are responsible, against the parents, jointly. If assessed  
168 jointly, each parent shall be jointly and severally liable for the civil penalty, unless  
169 responsibility is determined otherwise at a proceeding held pursuant Section 516.06.  
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171 Section 2. New sections 516.05 and 516.06 of the Codified Ordinances of the City of  
172 Cuyahoga Falls are hereby enacted to read in full as follows:

173  
174 516.05 ENFORCEMENT  
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176 (a) A minor found in violation of Section 516.02 may be detained pursuant to Ohio  
177 Revised Code §§2151.31 and 2151.311 and if so, shall be released only as provided for  
178 in those laws and/or Section 501.13 of these Ordinances. If a responsible parent  
179 cannot be located or, having been located, does not retrieve the minor within three (3)  
180 hours, the minor shall be transported to an authorized place of juvenile detention.  
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182 (b) A parent who responds to retrieve his or her minor child shall be served at that  
183 time with a "Notice of Liability" informing the responsible parent or parents of their  
184 responsibility to pay the civil penalty assessed by Section 516.04(c). If the minor is  
185 never retrieved by a parent, the "Notice of Liability" may be served by first-class mail or  
186 personal service at the residence or business address of the responsible parent or  
187 parents. A Return of Service and a copy of the "Notice of Liability" shall be filed with  
188 the Director of Finance for each "Notice of Liability" served under this Section. The  
189 "Notice of Liability" shall clearly state the manner in which the infraction may be  
190 appealed.  
191

192 (c) A civil penalty assessed under this Chapter shall be paid within thirty (30) days,  
193 unless it is appealed pursuant to Section 516.06. If the appeal is denied or modified,  
194 the civil penalty, or the penalty as modified, shall be paid within twenty-one (21) days  
195 after the appeal is decided. Civil penalties that have not been timely paid will accrue  
196 interest at the rate of 1.5% per month from the due date to the date of payment in full.  
197 Unpaid civil penalties and interest shall be deemed debts owed to the City, and may be  
198 collected by initiation of a civil action or any other lawful debt collection procedure.  
199

200 516.06 APPEAL OF CIVIL PENALTIES; CURFEW PENALTY REVIEW BOARD  
201

202 (a) Any parent assessed a civil penalty pursuant to this Chapter may, within seven  
203 days after receipt of a "Notice of Liability," make a written demand to the Director of  
204 Public Safety for a hearing on the question of whether the civil penalty should have  
205 been assessed.  
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207 (b) When a hearing is timely requested, a hearing shall be held no later than  
208 twenty-one (21) days following receipt of the request, and at least three days' notice of  
209 the hearing shall be provided to the person requesting the hearing. All hearings held  
210 pursuant to this Section shall be conducted during regular business hours at the  
211 Municipal Building before the Curfew Penalty Review Board ("Board"), which is hereby  
212 created. The Board shall be composed of the Law Director or designee, the Police  
213 Department Juvenile Diversion Officer/School Resource Officer, and a member of City  
214 Council appointed by the President of Council on or after the effective date of this  
215 section, and thereafter annually as of January 1st.  
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217 (c) The Board shall permit the person requesting the hearing to make a  
218 presentation to the Board, which may include the submission of documents or the  
219 testimony of witnesses. The Board may allow the appeal, deny the appeal, or modify  
220 the amount of the civil penalty, by a majority vote. The Board's decision shall be final

221 and binding on all parties, except as provided in Chapter 2506 of the Ohio Revised  
222 Code. The Board may establish further rules for the conduct of its proceedings, and  
223 shall record its decisions in writing.  
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225 (d) The Board's decision in each case shall be served by first-class mail upon the  
226 person who requested the hearing, and shall be deemed served when mailed. A copy of  
227 each decision will be forwarded to the Director of Finance.  
228

229 Section 3. Existing Sections 516.01, 516.02, 516.03 and 516.04 of the Codified  
230 Ordinances, as enacted by Ord. No. 161-1991, passed November 11, 1991, are hereby  
231 repealed.  
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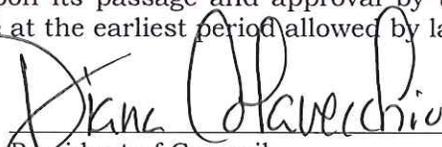
233 Section 4. If any section, subsection, paragraph, clause or provision or any part  
234 thereof of this ordinance shall be finally adjudicated by a court of competent  
235 jurisdiction to be invalid, the remainder of this ordinance shall be unaffected by such  
236 adjudication and all the remaining provisions of this ordinance shall remain in full force  
237 and effect as though such section, subsection, paragraph, clause or provision or any  
238 part thereof so adjudicated to be invalid had not, to the extent of such invalidity, been  
239 included herein.  
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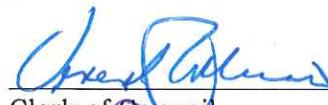
241 Section 5. Any ordinances or resolutions or portions of ordinances and resolutions  
242 inconsistent herewith are hereby repealed, but any ordinances and resolutions not  
243 inconsistent herewith and which have not previously been repealed are hereby ratified  
244 and confirmed.  
245

246 Section 6. It is found and determined that all formal actions of this Council  
247 concerning and relating to the passage of this ordinance were taken in an open meeting  
248 of this Council and that all deliberations of this Council and of any committees that  
249 resulted in those formal actions were in meetings open to the public, in compliance with  
250 all requirements including Chapter 107 of the Codified Ordinances.  
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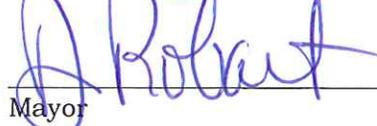
252 Section 7. This ordinance is hereby declared to be an emergency measure necessary  
253 for the preservation of the public peace, health, safety, convenience and welfare of the  
254 City of Cuyahoga Falls and the inhabitants thereof, and provided it receives the  
255 affirmative vote of two-thirds of the members elected or appointed to Council, it shall  
256 take effect and be in force immediately upon its passage and approval by the Mayor;  
257 otherwise it shall take effect and be in force at the earliest period allowed by law.  
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259 Passed: 4-25-11  
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261 \_\_\_\_\_  
262 President of Council

  
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264 Clerk of Council

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267 Approved 4/29/11  
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271 Mayor