

**TOWN OF WEST NEW YORK
COUNTY OF HUDSON**

ORDINANCE#13/11

AN ORDINANCE TO AMEND ORDINANCE #15/10, CHAPTER 167 OF THE CODE OF TOWN OF WEST NEW YORK RE: CURFEW

Whereas, the Mayor and Commissioners of the Town of West New York hereby find there has been a significant breakdown in the supervision normally provided by certain parents and guidance for juveniles under 18 years of age, resulting in juveniles being involved in a wide range of criminal and other unacceptable behavior, including vandalism, noisy and rowdy behavior, public drinking and littering, and harassment of residents; and

Whereas, The Mayor and Commissioners further find that the offensive activities of the juveniles are not easily controlled by existing laws and ordinances because the activities are easily concealed whenever police officers are present, and the establishment of reasonable curfew regulations will enable the community to better control the free and unobstructed access to the streets and public places by the majority of residents and will enable the police to act reasonably and fairly to prevent the violation of laws and ordinances by juveniles; and

Whereas, the Mayor and Commissioners further find and have determined that a curfew meets a very real local need and that curfew ordinances in other communities have been a significant factor in minimizing juvenile delinquency. A curfew in West New York is particularly appropriate in view of the high density of population in West New York and the mixed use of residential and commercial areas throughout the Town. The regulation of juveniles is an attempt to minimize danger to the juveniles and the community during the danger hours for nocturnal crime and mischief, which could be accentuated because of the juvenile's immaturity; and

Whereas, parental responsibility for the whereabouts of children is an accepted norm by a substantial majority of the community, and parents have expressed a desire to have a curfew in order to augment their efforts to supervise and guide their children; and

Whereas, N.J.S.A. 40:48-2.52 provides that a municipality may enact an ordinance making it unlawful for a juvenile of any age under 18 years, within the discretion of the municipality, to be on any public street or in a Public Right of Way between the hours of 10:00 p.m. and 6:00 a.m. unless accompanied by the juvenile's parent or guardian or unless engaged in, or traveling to or from, a business or occupation which the laws of this State authorize a juvenile to perform; and

Whereas, such an ordinance may also make it unlawful for any parent or guardian to allow an unaccompanied juvenile to be on any public street or in any Public Right of Way during those hours; and

Whereas, Betancourt v. Town West New York, 338 N.J. Super. 415 (App. Div. 2001) requires that any such ordinance recognize the right of parents to permit their children to participate in legitimate activities in light of the recognized and fundamental right of parents to raise their children free of interference from the state; and

Whereas, such regulation of juveniles acts to improve the quality of life in the community by eliminating the possibility of nuisances and fosters cooperation and assistance of parents in the control of their children;

NOW THEREFORE BE IT ORDAINED as follows by the Board of Commissioners of the Town of West New York, County of Hudson:

Section 1. Curfew

It shall be unlawful for a legally unemancipated person under 18 years of age (“Juvenile”) to be or remain in or upon a public right of way (street, alley, sidewalk or public park or any other public property)(“Public Right of Way”) within the Town of West New York at night from the period **10:00p.m.** on Sunday, through Thursday **6:00 a.m.**, on the following day, and between **11:00 p.m.** on Friday and Saturday and **6:00 a.m.** of the following day unless accompanied by a parent or guardian (“Curfew Hours”) except as provided for herein.

Section 2. Exceptions

1. It shall not be considered a violation of this ordinance for any person under 18 years of age to be in or remain in or upon a Public Right of Way within the Town of West New York during Curfew Hours:

- (a) When accompanied by a parent or guardian of such minor;
- (b) When in the process of traveling from a destination to a destination, where such destinations are not Public Rights of Way within the Town of West New York, in keeping with permission granted by such Juvenile’s parent or guardian, for any lawful purpose;
- (c) When traveling to or from a lawful occupation;
- (d) When traveling to or from a private or public school function or function sponsored by any non-profit entity;
- (e) When on a sidewalk immediately in front of the Juvenile’s residence but not otherwise blocking or obstructing the public way; and
- (f) When attending a private or public school function or function sponsored by any non-profit entity held in a Public Right of Way; and

2. Any person under 18 years of age, who continues to be or remains in or upon a Public Right of Way within the Town of West New York within one-hour of commencing any travel permitted as an exception in subparts (1)(b-d) of Section 2 of this Ordinance, during Curfew Hours, or who remains on their sidewalk pursuant to subpart (1)(e) of Section 2 of this ordinance for more then one-hour during the Curfew Hours, shall be in violation of Section 1 of this Ordinance.

Section 3. Parental responsibility.

It shall be unlawful for a parent or guardian having legal custody of a Juvenile knowingly to permit, or by inefficient control to allow, the Juvenile to be or remain upon any Public Right of Way under circumstances not constituting an exception to, or otherwise beyond the scope of, the Curfew Ordinance. The term "knowingly" includes knowledge, which a parent should reasonably be expected to have concerning the whereabouts of a Juvenile in that parent's legal custody. It is intended to obligate neglectful or careless parents to adhere 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. Notwithstanding the foregoing, it shall not be considered a violation of this Ordinance for a parent to grant a juvenile permission to travel from a destination to a destination, where such destinations are not Public Rights of Way within the Town of West New York, for any lawful purpose.

Section 4. Detections of Violations

A. In determining the age of the person thought to be a Juvenile and in the absence of convincing evidence such as a birth certificate, or a government issued identification, a police officer shall, in the first instance, use his or her best judgment in determining age.

B. A police officer, coming upon a Juvenile who appears, in such officer's reasonable judgment, to be in violation of this ordinance, shall require such Juvenile to continue on their way and leave the Public Right of Way. For purposes of this section, a Juvenile shall be appear to be in violation of this ordinance if such Juvenile remains idle in essentially one location, or participating in the activity known by the colloquial expression "hanging around".

C. If such Juvenile refuses to leave such place, the Police Officer shall require the Juvenile to provide the reason for their being on a Public Right of Way or park during Curfew Hours. If the Juvenile refuses to provide such information or move along, or the information provided does not appear to establish that an exception under Section 2 applies, such shall be prima facie evidence of a violation of this ordinance.

D. If a Juvenile has provided information to a police officer upon questioning, which establishes that an exception under Section 2 applies the Juvenile shall then be directed to continue on their way and leave such place, unless the Juvenile is awaiting another person's arrival with whom to continue a travel permitted pursuant to Section 2. The officer may inquire as to the identity of such person and the expected time of their arrival. Such Juvenile shall upon the arrival of the awaited traveling companion, immediately continue on their way and leave such place.

E. If a Juvenile has been told to continue on their way, and refuses to do so, as provided for in subsection C or D of this Section, such Juvenile shall then be considered in breach of Section 1 of this Ordinance, regardless of the applicability of any exception in Section 2.

Section 5 – Violations and Penalties

A. Community service. Any person, juvenile or adult, convicted of a violation of this ordinance, shall be required to perform community service as directed by the Court. As provided in N.J.S.A. 40:48-2.52, whenever both a Juvenile and the Juvenile's parent or guardian violate the chapter, they shall be required to perform community service together.

B. Fines. Any Juvenile convicted of a violation of the Curfew Ordinance shall be subject to a fine of \$100 for a first offense, \$200 for a second offense and not less than \$300, nor more than \$1,000, for any third and subsequent offense. Any parent or guardian convicted of a violation, after the warning notice pursuant of a first violation by a Juvenile, shall be fined \$100 and for a

second offense by a parent or guardian the fine shall be \$200. For any subsequent offense by a parent, the fine shall be not less than \$300 and not more than \$1,000.

Section 6 - Severability.

The provisions of this chapter are declared to be severable, and if any section, subsection, sentence, clause or phrase thereof for any reason be held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining sections, subsections, sentences, clauses and phrases of this chapter, but shall remain in effect; it being the legislative intent that this chapter shall stand notwithstanding the invalidity of any part.

Section 7.

All ordinances and parts of ordinances which are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

Section 8.

This ordinance shall take effect immediately upon final passage, approval, and publication as required by law, and shall expire on June 30, 2015.

Introduced: July 20, 2011

Adopted: August 17, 2011

CARMELA RICCIE, RMC
TOWN CLERK

BY ORDER OF THE MAYOR AND BOARD OF
COMMISSIONERS OF THE TOWN OF
WEST NEW YORK

STATEMENT

The foregoing ordinance having been previously adopted for first reading and published was further considered by the Mayor and Board of Commissioners of the Town of West New York on **August 17, 2011**, and at said date was duly and finally adopted after public hearing thereon. A copy (at no charge) is available at the Office of the Town Clerk to members of the general public of the Town who so request such copy in said Town Hall, 428 -60th Street, West New York, NJ.

Carmela Riccio, RMC
Town Clerk