

Town of Creswell
Curfew Ordinance

WHEREAS, Town Commissioners finds that the protection of juveniles from harm is a matter of compelling governmental interest; and

WHEREAS, Town Commissioners finds that a curfew ordinance which is based on documented need, and is narrowly tailored, is currently necessary to protect juveniles from themselves, each other, and from adults; and

WHEREAS, Town Commissioners finds that this ordinance is enacted in recognition of the peculiar vulnerability of juveniles, their frequent inability to make critical decisions in an informed, mature manner; and

WHEREAS, a narrowly tailored ordinance that imposes reasonable time, place, and manner restrictions upon juveniles in an effort to reduce juvenile victimization and arrests would be in the best interest of the public health, safety, and general welfare of the citizens of Creswell; and

WHEREAS, Town Commissioners finds that it is not necessary for a "state of emergency" to exist or be declared, for a municipality to impose reasonable time, place, and manner restrictions upon juveniles, when said restrictions are based upon a documented need and are imposed in an effort to protect said juveniles from potential harm; and

WHEREAS, Town Commissioners finds that the Town has broad authority to adopt and enforce such an ordinance and that adoption and enforcement of a curfew ordinance is consistent with the broad authority that the Town has to execute the powers, duties, and privileges conferred upon it by Chapter 160A of the North Carolina General Statutes.

WHEREAS, juveniles in the Town have been victimized during the restricted hours of the ordinance and that adoption of this ordinance will serve to assist the Town in seeking to prevent such victimization; and

WHEREAS, Town Commissioners finds that delinquent and criminal activity by and against juveniles presents a clear and present danger to the citizenry, and to the public order and safety; and

WHEREAS, it is the responsibility of government to attempt to prevent crime, delinquency, and juvenile victimization whenever and wherever it is possible to do so;

NOW, THEREFORE, be it ordained by the Town Commissioners of the Town of Creswell, North Carolina, that this ordinance be adopted.

- (a) The purpose of this ordinance is to protect juveniles from victimization and exposure to criminal activity by establishing a curfew for juveniles under the age of eighteen years in the Town of Creswell. The Curfew Ordinance is intended to reinforce and promote the health, safety, and welfare of both juveniles and adults by creating an environment offering better protection and security for all concerned.
- (b) Definition. For the purpose of this ordinance, the following words and phrases shall have the following meanings:
- (1) Direct route: The shortest reasonable path of travel or a commonly used route to reach a final destination without any detour or stop along the way.
 - (2) Emergency: 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, and 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 regardless of whether the juvenile's action is taken in order to prevent death or serious injury.
 - (3) Guardian: A person who is court-appointed to be the guardian of a juvenile.
 - (4) Juvenile: Any person who has not reached his or her eighteen birthday and is not married, emancipated, or a member of the armed services of the United States.
 - (5) Parent: 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.
 - (6) Caretaker: Person who by reason of circumstance has assumed position of a parent in the home of a juvenile.
 - (7) Public Place: 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, right-of-way, public vehicular areas and parking lots, transportation facilities, restaurants, schools and school grounds, places of business, playgrounds, parks, similar areas that are open to the public, and other common areas open to or accessible to the public.

(8) Remain: To linger or stay in a public place, or to fail to leave the premises when requested to do so by a police officer, or to fail to leave the premises of an establishment when requested to do so by the owner/operator or employee of the premises.

(9) Restricted Hours: The time of night referred to herein 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 Town of Creswell, North Carolina. Restricted hours shall mean:

(a) 9:00 p.m. until 6:00 a.m. on Sunday thru Saturday.

(c) Offenses:

(1) A juvenile commits an offense by being present in or remaining in any public place or on the premises of any establishment within the city during the restricted hours.

(2) A parent or guardian of a juvenile commits an offense if he or she knowingly permits, or by insufficient control, allows the juvenile to remain in any public place or on the premises of any establishment within the Town during the restricted hours. The term "knowingly" includes knowledge that a parent should reasonably be expected to have concerning the whereabouts of a juvenile 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.

(3) It shall be a violation of this ordinance for any person eighteen (18) years of age or older to aid or abet a juvenile in the violation of Section (c), (1), above.

(4) It shall be a violation of this ordinance for a parent or guardian to refuse to take custody during the restricted hours of a juvenile for whom the parent or guardian is responsible, within a reasonable period of time.

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

(1) The juvenile is accompanied by his or her parent, guardian, or other adult person twenty-one (21) years of age or older authorized by the parent or guardian of such juvenile and having the lawful care and custody of the minor:

- (2) The juvenile is upon an emergency errand directed by his/her parent, guardian, or other adult person twenty-one (21) years of age or older having the lawful care and custody of the minor, or is reacting to or responding to an emergency;
- (3) The juvenile is engaged in a lawful employment activity, or using a direct route to or from a place of employment;
- (4) The juvenile is attending or traveling directly to or from an activity involving the exercise of the First Amendment rights of free speech, freedom of assembly for proper public purpose, or free exercise of religion;
- (5) The juvenile is in a motor vehicle with parental consent for normal travel with interstate and intrastate travel through the Town of Creswell being excepted in all cases from this ordinance;
- (6) The juvenile is 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 Town of Creswell or other governmental entity, a civic organization, or another similar entity that accepts responsibility for the juvenile;
- (7) The juvenile is married or emancipated, or is a member of the armed services of the United States.

(e) Enforcement:

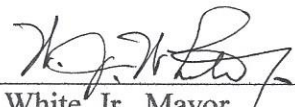
- (1) Before taking any enforcement action under this ordinance, a police officer shall ask the apparent offender's name, age, and reason for being in the public place or establishment during the restricted hours.
- (2) The officer shall not prepare a juvenile arrest report, issue a citation, or make an arrest under this ordinance unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no exception or defense in subsection (d) is present.

(f) Penalties

- (1) Any person other than juvenile charges with violation of this section for the first time shall be given a warning citation. Upon subsequent violation, the person shall be charged with violation and, if found guilty, such person shall be subject to punishment as provided in North Carolina General Statutes 14-4.

- (2) A juvenile who violates any provision of this ordinance 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.
- (g) Severability: If any section, subsection, sentence, term, or exception of this ordinance, or any application thereof to any person or circumstance is adjudged to be unconstitutional or invalid, such adjudication shall not affect the validity of any remaining portion of this ordinance or its application to any other person or circumstance. The Town Commissioners do not intend a result through the enforcement of this ordinance that is absurd, impossible of execution or unreasonable. Commissioners intends that the ordinance be held inapplicable in such cases, if any, where its application would be unconstitutional under the Constitution of the State of North Carolina or under the Constitution of the United States of America.

The foregoing Ordinance is hereby adopted at a regular meeting of the Town Commissioners of the Town of Creswell, on this 14th day of March, 2005.



W. J. White, Jr., Mayor

ATTEST



Penny F. Chapman, Town Clerk

