

May 3, 2004

**ORDINANCE
NO. 2004 - 151**

An Ordinance Amending Article II, Chapter 15 of the Code of Ordinances of the City of Elmira By Adding Sections 15-15 through 15-21, Curfew for Minors, as follows:

By Councilmember Royle:

BE IT ORDAINED, by the Council of the City of Elmira, duly convened in regular session this 3rd day of May, 2004, as follows:

**CHAPTER 15
ARTICLE II
CURFEW FOR MINORS**

Section 1. A new Section 15-15 is added to read as follows:

Section 15-15. The City Council of the City of Elmira determines that a curfew is necessary to further the public health, safety and general welfare of the inhabitants of the City of Elmira and specifically to further the following interests:

- (a) The reduction of the incidence of juvenile criminal activity and vandalism;
- (b) The protection of children from others on the street during the nighttime hours; and
- (c) The promotion and enforcement of parental control and responsibility for the children.

Section 2. A new Section 15-16 is added to read as follows:

Section 15-16. Definitions. For the purpose of this article, the following terms, phrases, words and their derivations shall have the meanings given herein. The word “shall” is always mandatory and not merely directory.

- (a) *city* – the City of Elmira;
- (b) *emergency errand* – A trip taken to perform a specific task to help to bring aid or comfort or to resolve an unexpected or sudden occurrence which immediately threatens private or public health or safety;
- (c) *guardian* – Any person other than a parent, who has legal guardianship of a minor;

- (d) *minor* – A person sixteen years of age or younger;
- (e) *parent* – The natural or adoptive parent of a minor;
- (f) *person* – Any individual, firm or corporation; and
- (g) *public place* - Any street, alley, highway or other public thoroughfare, sidewalk, park, playground or place to which the general public has access and a right to resort for business, entertainment or other lawful purpose in the City. A public place shall include but not be limited to any store, shop, restaurant, tavern, bowling alley, café, theater, drugstore, pool room, shopping center and any other place devoted to amusement or open to the general public. It shall also include the front or immediate area of the above.

Section 3. A new Section 15-17 is added to read as follows:

Section 15-17. Prohibited Acts. It shall be unlawful for any minor to remain in or upon any public street, park, vacant lot or other public place between the hours of 11:00 p.m. and 5:00 a.m. of the following day.

Section 4. A new Section 15-18 is added to read as follows:

Section 15-18. Exceptions. A minor shall not be in violation of the article:

- (a) any time that the minor is accompanied by his or her parent, legal guardian or other responsible person over the age of twenty-one years and approved in writing in advance by the minor's parent or legal guardian;
- (b) if the minor is on an emergency errand as directed by his or her parent or legal guardian;
- (c) if the minor is legally employed, for the period from one half hour before to one half hour after work, while going directly between his or her home and place of employment. This exception shall also apply if the minor is in a public place during the curfew hours in the course of his or her employment. To come under the exception, the minor must be carrying a written statement from the employer attesting to the place and hours of employment;

- (d) until the hours of 12:30 a.m., if the minor is on the property of or the sidewalk directly adjacent to the building in which he or she resides or the building immediately adjacent thereto, if the owner of the adjacent building has not objected to the minor and the place;
- (e) if the minor is coming directly home from a school activity or an activity of a religious or other voluntary association or place of public entertainment such as a movie, play or sporting event. This exception will apply for one half hour after the completion of such event, but in no case beyond 12:30 a.m. If the event is not commercial entertainment in nature and does not have a fixed, publicly known time at which it will end, the sponsoring organization must register the event with the Police Department at least 24 hours in advance, informing it of the time such event is scheduled to begin, the place at which it shall be held, the time at which it shall end, and the name of the sponsoring organization; and
- (f) if the minor is exercising the First Amendment rights protected by the Constitution, such as the free exercise of religion, speech or assembly, provided the minor first has given notice to the City Manager or his designee by delivering a written communication signed by the minor and countersigned by a parent or guardian of the minor which specifies when, where, in what manner and for what First Amendment purpose the minor will be on the streets at night during the curfew period.

Section 5. A new Section 15-19 is added to read as follows:

Section 15-19. Parental Responsibility. It shall be unlawful and a violation of this article for a parent, legal guardian or person having the physical custody of the minor to knowingly permit or by inadequate supervision allow a minor to be in or upon any public place during the period of time prohibited by this article under circumstances not constituting an exception as specified in this article.

Section 6. A new Section 15-20 is added to read as follows:

Section 15-20. Enforcement.

- (a) If a police officer reasonably believes that a person is in a public place in violation of this article, the officer shall notify the person of such violation and shall require the person to provide his or her name, address, telephone number and how to contact his or her parents. In determining the age of the person and in the absence of convincing evidence, such as a birth certificate or driver's license, the officer shall use his or her best judgment in determining age;
- (b) The officer may issue an appearance ticket or tickets as the circumstances require;
- (c) If the officer determines or has reason to believe that a person is in violation of this article, he or she may take the person to police headquarters where a parent shall be immediately notified and required to report to police headquarters and procure the person, whereupon the parent shall be questioned to ascertain, within constitutional limits, the relevant facts. The minor shall be released to the custody of a parent or guardian. If a parent or guardian cannot be located or fails to take charge of the minor, the minor may be temporarily entrusted to a relative, neighbor or other person who will assume responsibility of caring for the minor pending availability of a parent; and
- (d) In case of a first violation by a minor, the Police Department shall serve a parent, legal guardian or person having physical custody of the minor with written notice of the violation with a warning that any subsequent violation will result in full enforcement of the curfew ordinance, including enforcement of parental responsibility and applicable penalties. Service shall be made either by personal service upon the parent, legal guardian or person having physical custody of the minor, or by mailing, by first class mail, to the parent, legal guardian or person having physical custody of the minor at his or her last known residence address.

Section 7. A new Section 15-21 is added to read as follows:

Section 15-21. Penalties.

- (a) Any minor under the age of sixteen years of age violating the provisions of this article for the first or second time shall be dealt with in accordance with the procedures contained in Section 15-20 herein. Any such minor having violated the provisions of this article on more than two occasions shall be summoned into the City's Youth Court;
- (b) Any minor sixteen years of age who is convicted for violating any provision of this article shall be guilty of a violation punishable by a fine of not more than twenty-five dollars (\$25) for the first conviction, fifty dollars (\$50) for the second conviction, and one hundred dollars (\$100) thereafter, or by a term of imprisonment not to exceed fifteen (15) days, or be required to perform community service, or any combination thereof;
- (c) Any parent, legal guardian or personal having physical custody of the minor convicted of violating any provision of this article shall be guilty of a violation punishable by a fine of not more than fifty dollars (\$50) for the first conviction, one hundred dollars (\$100) for the second conviction, and two hundred fifty dollars (\$250) thereafter, or by a term of imprisonment not to exceed fifteen (15) days, or be required to perform community service, or any combination thereof.

Section 8. ***Effective Date.*** This ordinance shall take effect immediately upon adoption and publication according to law.