

Introduced by Council Member _____

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF PASADENA RELATING TO
CURFEWS FOR MINORS AND AMENDING THE PASADENA
MUNICIPAL CODE

WHEREAS, the Pasadena Municipal Code currently prohibits minors from loitering between 10 p.m. and sunrise (the nighttime curfew) and between 8:30 a.m. and 1:30 p.m. on days when the minor's school is in session (the daytime curfew) and the minor is expected to be attending school; and

WHEREAS, in Nunez v. City of San Diego, 114 F.3d 935 (June, 1997), the U.S. Court of Appeals for the Ninth Circuit considered an ordinance adopted by the City of San Diego which prohibited minors from loitering between 10 p.m. and sunrise. The court found the ordinance unconstitutional because it did not contain exceptions to allow minors to engage in constitutionally protected activities; and

WHEREAS, the City's nighttime and daytime curfews are distinguishable from the curfew considered by the Nunez court because they do not restrict constitutionally protected activities in the same way; and

WHEREAS, the ongoing application of the nighttime and daytime curfews is necessary to promote compelling governmental interests because they reduce juvenile crime and juvenile victimization. Minors are particularly vulnerable to violence due to their lack of maturity and experience and their limited ability to make critical decisions in an informed and mature manner; and

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10.B.1.

WHEREAS, the City's daytime curfew is also distinguishable from the curfew considered by the Nunez court because it promotes a compelling governmental interest in compulsory education and reduces truancy and drop-out rates; and

WHEREAS, the City Council desires to clarify that the daytime and nighttime curfews do not restrict constitutionally protected activities;

NOW, THEREFORE, THE PEOPLE OF THE CITY OF PASADENA ORDAIN AS FOLLOWS:

Section 1. This ordinance, due to its length and the corresponding costs of publication, will be published by title and summary as permitted by Section 508 of the Charter. The approved summary reads as follows:

"Summary

This ordinance amends existing regulations regarding minors who loiter between 10 p.m. and sunrise (the nighttime curfew) and between 8:30 a.m. and 1:30 p.m. on days when the minor's school is in session (the daytime curfew), by clarifying that the daytime and nighttime curfews do not restrict constitutionally protected activities. This ordinance provides additional definitions and specifies additional exceptions which would apply to enforcement of the nighttime and daytime curfews.

This ordinance shall take effect thirty days after publication of its title and summary."

Section 2. Section 9.68.010 of Title 9, Article VII, Chapter 9.68 of the Pasadena Municipal Code is hereby amended to read as follows:

"9.68.010. CURFEWS FOR MINORS:

- A. Nighttime curfew: Every minor who is present in or upon any public or private street, road, drive, alley, or trail; any public or community park or recreation area; any public ground, place, or building; or any vacant lot or abandoned or vacant building between the hour of 10:00 p.m. and the time of sunrise of the following day is guilty of an infraction unless the minor meets one of the exceptions set forth in subsection D of this Section.
- B. Daytime curfew: Every minor subject to compulsory education or to compulsory continuation education who is present in or upon any public or private street, road, drive, alley, or trail; any public or community park or recreation area; any public ground, place, or building; or any vacant lot or abandoned or vacant building between the hours of 8:30 a.m. and 1:30 p.m. of the same day, on days when the minor's school is in session, is guilty of an infraction unless the minor meets one of the exceptions set forth in subsection D of this Section or: is in possession of a valid, school-issued, off-campus permit giving permission to leave campus; is receiving instruction by a qualified tutor pursuant to Education Code Section 48224; or is otherwise exempt from attendance at a public or private full-time day school as set forth in the Education Code.
- C. This section shall not apply if the minor is:
 - 1. Accompanied by a custodial person or by the minor's spouse over eighteen (18) years of age;

2. On an errand directed by, and in possession of a written excuse from, a custodial person or spouse over eighteen (18) years of age;
3. Engaged in or going directly to or returning directly from a school-approved activity or one that is supervised by school personnel, a medical appointment, a religious activity, other lawful educational or recreational activity supervised by adults and sponsored by the school, the city, a civic organization, or a similar entity that takes responsibility for the child;
4. Engaged in a lawful employment activity or in a place in connection with or as required by a business, trade, profession, or occupation in which the minor is lawfully engaged, or going directly to or returning directly from such activity;
5. Engaged in or going directly to or returning directly from any other lawful activity with written permission from a custodial person or spouse over the age of eighteen (18) years of age;
6. Involved in an emergency or seeking medical assistance;
7. Exercising rights protected by the First Amendment of the United States Constitution or Article 1 of the California Constitution, including but not limited to: free exercise of religion, freedom of speech and freedom of assembly;
8. In the right-of-way abutting the minor's residence;
9. In a motor vehicle involved in interstate travel;

10. Emancipated pursuant to State law and California Family Code Section 7000, et seq, including but not limited to the following reasons: married or in the military service;

D. Definitions:

1. The word "emergency" as used in this Section means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes but is not limited to fire, natural disaster, automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

2. The word "minor" as used in this Section means a person under the age of eighteen (18) years.

3. The word "custodial person" as used in this Section means any parent or legal guardian of the minor, or any person twenty-one (21) years of age or older who possesses written authorization by such parent or legal guardian for the care and custody of the child.

E. Enforcement Procedures: A police officer shall ask the age of an apparent offender and the reason for being on the premises or property. The officer shall not issue a citation or make an arrest unless the officer reasonably believes that an offense has occurred and that none of the exceptions set forth in Subsection C apply.

F. Power of Law Enforcement Officers: Nothing in this Section shall be construed as limiting in any way the power or right of law enforcement officers to make investigations, detentions or arrests as would have been permitted had this Section not been enacted."

Section 3. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 4. The City Clerk shall certify the adoption of this ordinance and shall cause the ordinance to be published.

Section 5. This ordinance shall take effect thirty days following its publication by title and summary.

Signed and approved this _____ day of _____, 1997.

Chris Holden
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council at its meeting held _____, 1997, by the following vote:

AYES:

NOES:


ABSENT:

ABSTAIN:

Published:

Jane L. Rodriguez
City Clerk

APPROVED AS TO FORM:



Michele Beal Bagneris
City Attorney