

TOWN OF CLAYTON
AMENDMENT TO THE TOWN CODE OF ORDINANCES
RELATING TO YOUTH PROTECTION AND CURFEW, CHAPTER 133

BEING HEREBY ADOPTED BY THE TOWN COUNCIL FOR THE TOWN OF CLAYTON, NORTH CAROLINA that the following text shall be amended to the Code of Ordinances:

Add Chapter 133 to read:

CHAPTER 133: YOUTH PROTECTION

Section 133.01 Purpose

The purpose of this chapter is to protect juveniles from victimization and exposure to criminal activity by establishing a curfew for juveniles under the age of sixteen (16) years in the Town of Clayton. The youth protection ordinance is intended to reinforce and promote the role of the parent in raising and guiding children, and promote the health, safety, and welfare of both juveniles and adults by creating an atmosphere offering better protection and security for all concerned.

Section 133.02 Definitions

For the purpose of this chapter, the following words and phrases shall have the following meanings:

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.

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, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or death.

Establishment. Any privately owned place of business operated for profit to which the public has access or is invited, including but not limited to any place of amusement or entertainment.

Juvenile. Any person under the age of sixteen (16) years who is not married or been emancipated.

Owner/operator. Any individual, firm, association, partnership or corporation, operating, managing, or conducting any establishment, including employees, members or partners of an association or partnership and the officers of a corporation.

Parent. Any person having legal custody of a juvenile (i) as a natural or adoptive parent, (ii) as a legal guardian, (iii) as a person who stands in loco parentis, or (iv) as a person to whom legal custody has been given by court order.

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-owned or privately-owned, including but not limited to streets, sidewalks, highways, alleys, rights-of-way, public vehicular areas and parking lots, transportation facilities, theaters, restaurants, shops, convenience stores, bowling alleys, schools and school grounds, places of business and amusement, playgrounds, parks, similar areas that are open to the public, and other common areas open to or accessible to the public.

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 establishment.

Restricted Hours. The time of night referred to herein as based upon the prevailing standard of time, whether Eastern Standard Time or Eastern Daylight Saving Time, generally observed by the public in the Town of Clayton, North Carolina. Restricted hours shall mean:

(1) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. of the following day; and

(2) 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday

Section 133.03 Offenses

Except as provided by Section 133.04, the following offenses constitute a violation of this chapter:

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

(b) A parent of a juvenile commits an offense if he or she knowingly permits, and/or by inadequate control or insufficient supervision, allows the juvenile to remain on the premises of any establishment or in any public place within the Town during the restricted hours where the exceptions of Section 133.04 do not apply. 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.

(c) A parent of a juvenile commits an offense by refusing to take custody of the juvenile during the restricted hours.

(d) The owner, operator, or any employee of an establishment commits an offense if he or she knowingly allows a juvenile to remain upon the premises of the establishment during the restricted hours where the exceptions of Section 133.04 do not apply. The term “knowingly” includes knowledge that an owner, operator, or employee should reasonably be expected to have concerning the patrons of an establishment. The standard for “knowingly” shall be applied through an objective test; whether a reasonable person in the owner, operator, or employee’s position should have known that a patron was a juvenile in violation of this chapter. The owner, operator, or employee of the establishment will be in violation of this chapter if he or she has not promptly reported or attempted to report to the Town of Clayton Police Department that a juvenile was present on the premises in violation of this chapter and refused to leave.

(e) It shall be a violation of this chapter for any person sixteen (16) years of age or older to aid or abet a juvenile in violation of section 133.03(a).

Section 133.04 Exceptions

A juvenile who is in a public place or establishment during the restricted hours shall not be in violation of this chapter if the juvenile is:

(a) Accompanied by his or her parent.

(b) Accompanied by an adult eighteen (18) years of age or older authorized by the parent of such juvenile to take the parent’s place in accompanying the juvenile for a designated period of time and purpose within a specified area.

(c) On an errand, using a direct route, at the direction of the juvenile’s parent until the hour of 12:30 a.m., and the juvenile has in his or her possession a written communication signed by the parent containing the name, signature, address, and telephone number of the parent authorizing the errand, the telephone number where the parent may be reached during the errand, the name of the juvenile, and a brief description of the errand, the juvenile’s destination, and the hours the minor is authorized to be engaged in the errand.

(d) Engaged in a lawful employment activity, using a direct route to or from a place of employment.

(e) Reacting or responding to an emergency.

(f) In a motor vehicle with parental consent engaged in interstate travel through, or beginning or terminating in, the Town of Clayton.

(g) Attending or traveling to or from, by direct route, an official school, religious, or recreational activity which is supervised by adults that accept responsibility for the juvenile. If during restricted hours, the juvenile’s parent must have knowledge of, and have granted approval for, the juvenile’s participation in such activity.

(h) Exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right to assembly.

Section 133.05 Enforcement Procedure

(a) If a police officer reasonably believes that a juvenile is in violation of this chapter and that no exception or defense in Section 133.04 is present based on any response and other circumstances, the officer shall notify the juvenile that he or she is in violation of the ordinance and shall require the juvenile to provide his or her name, address, and telephone number and how to contact his or her parent. In determining the age of the juvenile and in the absence of convincing evidence such as a birth certificate, a police officer shall, in the first instance of violation of the ordinance, use his or her best judgment in determining age.

(b) The police officer shall issue the juvenile a written warning that the juvenile is in violation of this chapter and order the juvenile to go promptly home. The Chief of Police shall send the parent of the juvenile written notice of the violation by certified mail with a warning that any subsequent violation will result in full enforcement of this chapter, including enforcement of parental responsibility and of applicable penalties.

(c) Police procedures shall constantly be refined in the light of experience and may provide that the police officer deliver to a parent a juvenile under appropriate circumstances; for example, a juvenile of tender age, near home, whose identity and address may readily be ascertained or are known.

(d) Notwithstanding the foregoing, when: (i) a juvenile has received one (1) previous written warning for violation of this section; or (ii) a police officer has reasonable grounds to believe that the juvenile has engaged in delinquent conduct, the procedure shall then be to take the juvenile to the police station where a parent shall immediately be notified to come for the juvenile, whereupon the parent and the juvenile shall be questioned. This is intended to permit ascertainment, under constitutional safeguards, of relevant facts, and to centralize responsibility in the person designated there and then on duty for an accurate, effective, fair, impartial and uniform enforcement, and recording, thus making available experienced personnel and access to information and records.

(e) When a parent, immediately called, has come to take charge of the juvenile, and the appropriate information has been recorded, the juvenile shall be released to the custody of such parent. If the parent cannot be located or fails to take charge of the juvenile, then the juvenile shall be released to the juvenile authorities, except to the extent that in accordance with police regulations, approved in advance by juvenile authorities, the juvenile may temporarily be entrusted to an adult, neighbor, or other person who will on behalf of a parent assume the responsibility of caring for a juvenile pending the availability or arrival of a parent.

(f) For the first violation of the ordinance by an owner/operator of an establishment who permits a juvenile to remain on the premises, a police officer shall issue a written notice of the

violation with a warning that any subsequent violation will result in full enforcement of this chapter, including enforcement of owner/operator responsibility and of applicable penalties.

Section 133.06 Penalties

(a) A juvenile who violates any provision of this chapter 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.

(b) Any person other than a juvenile who violates any provision of this chapter shall be guilty of a misdemeanor and shall be subject to a fine not to exceed \$100.00, and imprisonment in the discretion of the Court in accordance with N.C.G.S. 14-4.

133.07 Severability

If any section, subsection, sentence, term, or exception of this chapter, 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 chapter or its application to any other person or circumstance. The Town Council declares its intent to adopt and enforce each and every section of this chapter separate and independent from one another. The Town Council does not intend a result through the enforcement of this chapter that is absurd, impossible of execution, or unreasonable. The Town Council intends that the chapter 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.

Duly adopted this ____ day of _____ 2009, while in regular session.

Jody L. McLeod
Mayor

ATTEST:

APPROVED AS TO FORM:

Sherry L. Scoggins, MMC
Town Clerk

Brenton W. McConkey
Town Attorney