

**STAFF REPORT TO THE CITY COUNCIL FOR CONSIDERATION AT THE
COUNCIL MEETING OF FEBRUARY 26, 2008**

FROM: Jim Hyde, Police Chief
Lynn Tracy Nerland, City Attorney

DATE: February 20, 2008

SUBJECT: Juvenile Protection Curfew Ordinance

RECOMMENDATION:

Approve an ordinance deleting Article 2 of Chapter 10 of Title 5 of the Antioch Municipal Code in its entirety and adding a new Article 2 relating to a Juvenile Protection Curfew (Attachment A), which establishes a curfew of 11:00 p.m. for juveniles under 18 years of age, subject to certain exceptions.

BACKGROUND:

The ordinance establishes a curfew of 11:00 p.m. seven days a week for juveniles under 18 years of age. The general categories of exceptions to the curfew that staff expects to present are when the juvenile is: 1) accompanied by a parent or guardian; 2) involved in an emergency; 3) engaged in or returning directly from volunteer or paid employment; 4) on the sidewalk abutting the juvenile's residence; 5) attending or returning directly home from an adult-supervised activity sponsored by school, religious, cultural or civic organization; 6) on an errand with written parental permission; and 7) involved in interstate travel. The proposed ordinance also makes it unlawful for a parent to knowingly permit a curfew violation. Further, operators of establishments (e.g. restaurants, theaters) who knowingly allow a juvenile to remain on premises after curfew hours would also be a violation of the ordinance. The change in the age limit made prior to the introduction of the ordinance is reflected in Attachment A.

FISCAL IMPACT:

The adoption of an ordinance is not expected to create a fiscal impact by itself.

OPTIONS:

Staff is presenting no options because the recommendation is consistent with the City Council's action on February 19, 2008.

ATTACHMENT:

- A. Ordinance deleting Article 2 of Chapter 10 of Title 5 of the Antioch Municipal Code in its entirety and adding a new Article 2 relating to a Juvenile Protection Curfew

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
DELETING ARTICLE 2 OF CHAPTER 10 OF TITLE 5 OF THE ANTIOCH
MUNICIPAL CODE IN ITS ENTIRETY AND ADDING A NEW ARTICLE 2
RELATING TO A JUVENILE PROTECTION CURFEW**

The City Council of the City of Antioch does ordain as follows:

SECTION 1. Article 2 "Loitering by Minors" of Chapter 10 of Title 5 of the Antioch Municipal Code is DELETED in its entirety and a new Article 2 "Juvenile Protection Curfew" is added to read as follows:

ARTICLE 2: JUVENILE PROTECTION CURFEW

Section 5-10.201. Definitions

"Curfew Hours" means the time of night from 11:01 p.m. through 5:00 a.m. seven nights a week.

"Emergency" means any unforeseen circumstances, or the resulting status or condition, requiring immediate action to safeguard life, limb or property. The term includes, but is not limited to, fires, natural disasters, automobile accidents, serious illness, serious bodily injury or other similar circumstances.

"Establishment" means any privately owned place of business within the City operated for a profit, to which the public is invited, including, but not limited to any place of amusement or entertainment.

"Minor" or "Juvenile" may be used interchangeably and means any unmarried person less than eighteen (18) years of age who has not been legally emancipated.

"Operator", the term means, with respect to an Establishment as defined above, any person, and/or any firm, association, partnership (and its members or partners) or any corporation (and its officers) conducting or managing that Establishment.

"Parent" means:

(1) a person who is a minor's biological or adoptive parent, or step-parent and who has legal custody of a minor (including either parent, if custody is shared under a court order or agreement); or

(2) a person who is the biological, adoptive or step-parent parent with whom a minor regularly resides; or

(3) a person judicially appointed as a legal guardian of the minor; or

(4) a person eighteen (18) years of age or older standing in *loco parentis* (as indicated by the written authorization of an individual listed in part(s) (1), (2) or (3) of this definition, above, for the person to assume the care or physical custody of the child, or as indicated by any other circumstances).

"Person" refers to an individual, not to any association, corporation, or any other legal entity.

"Public Place" refers to any place to which the public or a substantial group of the public has access, including, but not limited to: streets, highways, roads, sidewalks, alleys, avenues, parks, or the common areas of schools, hospitals, apartment houses, office buildings, transportation facilities and shops.

"Remain" refers to the following actions:

- (1) to linger or stay at or upon a place;
- (2) to fail to leave a place when requested to do so by any peace officer or by the owner, operator or other person in control of that place;
- (3) to stand, walk, sit or run.

"Temporary care facility" refers to a non-locked, non-restrictive shelter at which minors may wait, under visual supervision, to be retrieved by a parent. No minors waiting in such facility shall be handcuffed or secured (by handcuffs or otherwise) to any stationary object.

Section 5-10.202 Purpose.

The purpose of this section is to: (i) promote the safety and well-being of the City's youngest citizens, persons under the age of eighteen (18), whose inexperience renders them particularly vulnerable to becoming participants in unlawful activities, particularly unlawful drug activities and gang activities, and to being victimized by older perpetrators of crime; (ii) promote the general welfare and protect the general public through the reduction of juvenile violence and crime within the City; and (iii) assist in fostering and strengthening parental responsibility for their children.

Section 5-10.203 Curfew-Prohibited Conduct-Exceptions

It shall be unlawful for a minor under eighteen (18) years of age to remain in or upon any public place within the City, to remain in any motor vehicle operating or parked on any public place within the City, or to remain in or upon the premises of any establishment within the City during curfew hours, unless:

- (1) the minor is accompanied by a parent; or
- (2) the minor is involved in an emergency; or
- (3) the minor is engaged in a lawful volunteer or paid employment activity, or is going to or returning home from such activity, without detour or stop; or

(4) the minor is on the sidewalk directly abutting a place where he or she resides with a parent; or

(5) the minor is attending or going to or returning home, without detour or stop, from an activity, which is supervised by adults and sponsored by a school, religious, cultural or civic organization, a public organization or agency or another similar organization or entity, or any organized rally, demonstration, meeting or similar organized activity; or

(6) the minor is on an errand at the direction of a parent, and the minor has in his or her possession a writing dated and signed by the parent containing the following information: 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 minor, and a brief description of the errand, the minor's destination(s), a brief physical description of the minor and the hours the minor is authorized to be engaged in the errand; or

(7) the minor is involved in interstate travel through, or beginning or terminating in, the City of Antioch.

Section 5-10.204 Other Prohibited Conduct.

(A) It shall be unlawful for a minor's parent to knowingly permit, allow or encourage such minor to violate any provision of section 5-10.203.

(B) It shall be unlawful for a person who is the owner or operator of any motor vehicle to knowingly permit, allow or encourage a violation of any provision of section 5-10.203.

(C) It shall be unlawful for the operator or any employee of any establishment, to knowingly permit, allow or encourage a minor to remain upon the premises of the establishment during curfew hours. It shall be a defense to prosecution under this subsection that the operator or employee of an establishment promptly notified the police department that a minor was present at the establishment during curfew hours and refused to leave.

(D) It shall be unlawful for any person (including any minor) to give a false name, address, or telephone number to any officer investigating a possible violation of section 5-10.203.

Section 5-10.205 Enforcement.

(A) Minors. Before taking any enforcement action under this ordinance, an officer shall make an immediate investigation for the purpose of ascertaining whether or not the presence of a minor in a public place, motor vehicle or establishment within the City during curfew hours is in violation of section 5-10.203. If such investigation reveals that the presence of such minor is in violation of 5-10.203 then:

(1) The officer may issue a verbal warning for any such violation; or

(2) The officer may issue a verbal warning for any such violation, followed by a written warning mailed by the police department to the minor and his or her parents; or

(3) The officer may charge the minor with a violation of this ordinance and shall issue a summons requiring the minor to appear in court and, as soon as practicable, the officer shall:

(a) release the minor to his or her parent(s); or

(b) place the minor in a temporary care facility for a period not to exceed the remainder of the curfew hours, so that his or her parent(s) may retrieve the minor; or

(c) if a minor refuses to give an officer his or her name and address, refuses to give the name and address of his or her parent(s), or if no parent can be located prior to the end of the applicable curfew hours, or if located, no parent appears to accept custody of the minor, the minor may be taken to a non-secure crisis center or juvenile shelter and/or may be taken to a judge or intake officer of the juvenile court to be dealt with in the manner and pursuant to such procedures as required by law.

(B) Others. If an investigation by an officer reveals that a person has violated subsection 5-10. 204 (A), (B) or (C), the officer may issue a verbal warning, or issue a verbal and written warning, or charge the person with a violation of the ordinance and issue a summons directing the person to appear in court.

Section 5-10.206 Constitutional Rights

Nothing in this ordinance shall be interpreted to preclude minors from being in a public place for the purpose of exercising their rights guaranteed by the First Amendment of the United States Constitution and by Article I, Sections 2, 3, and 4 of the California Constitution, including the free exercise of religion, freedom of speech, the right of assembly and the right to petition.

SECTION 2. Severability.

If any sections, subsections, sentences, clauses, phrases or portions of this Ordinance are for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause of this Ordinance whether or not any one or more sections, subsections, phrases or clauses may be declared invalid or unconstitutional on their face or as applied.

SECTION 3. Effective Date. This Ordinance shall take effect thirty (30) days after adoption as provided by Government Code Section 36937.

SECTION 4. Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published according to state law.

* * * * *

I HEREBY CERTIFY that the foregoing ordinance was introduced at a regular meeting of the City Council of the City of Antioch held on the 19th of February 2008 and passed and adopted at a regular meeting thereof, held on the ____ day of _____2008, by the following vote:

AYES: Council Members

NOES:

ABSENT:

MAYOR OF THE CITY OF ANTIOCH

ATTEST:

CITY CLERK OF THE CITY OF ANTIOCH