

**REPORT TO MAYOR AND COUNCIL****TO THE HONORABLE MAYOR AND COUNCIL:**

DATE: July 12, 2011

SUBJECT: PROPOSED ADOPTION OF A DAYTIME CURFEW ORDINANCE AND REVISIONS TO EXISTING NIGHTTIME CURFEW ORDINANCE**Report in Brief**

The purpose of this staff report is to recommend modifications to the City's existing nighttime curfew ordinance and to add daytime curfew restrictions. In California, daytime curfew ordinances are local public safety measures designed to prevent daytime crime, increase community and youth safety, and deter truancy. Properly written, daytime curfew ordinances are a constitutionally valid, effective mechanism to increase community safety during hours when public schools are in session. There are numerous municipalities in the Bay Area with daytime curfew ordinances. Many law enforcement agencies in these municipalities regard daytime curfew ordinances as an effective crime prevention tool. Likewise, educators, school administrators, and parent-teacher groups also support daytime curfew ordinances as part of a strategic effort to improve public safety and deter truancy.

Background

The City of Concord presently has a nighttime curfew ordinance. At certain points during the past 20 plus years, however, the Concord Police Department ("CPD") staff has also briefed the Council on the truancy problem and associated crime faced by the City of Concord, as well as the status and viability of a daytime curfew ordinance:

In November 1991, Staff presented to the Council a report outlining the scope of the truancy issue in Concord, and how truancy was being addressed. The report detailed the comprehensive measures that were being utilized to address this problem, most of which are still in effect today: School Resource Officers (SRO) primarily lead daytime truancy enforcement efforts, augmented by beat Patrol Officers, downtown foot beat Officers, and campus supervisory staff from the high schools. The focus of these collective efforts has primarily been on habitual offenders.

In October 2000, CPD and Mount Diablo Unified School District (MDUSD) staff jointly presented to the Council an updated report on the truancy problem in Concord. The report discussed the viability of a daytime curfew ordinance to augment the existing truancy law framework provided in the California Education Code. In lieu of a daytime curfew ordinance, Council directed staff to explore alternative solutions.

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In December 2006, staff reported to the Council the benefits of the SRO program, including the deterrence factor to criminal activity and truancy.

In April 2007, CPD and City Planning staff presented a report to the Council outlining the deleterious impact of juvenile truancy on downtown Concord businesses, patrons and City services. This presentation emphasized the linkage between truant downtown high school students and incidents of vandalism, thefts, and fighting. The information contained in this report ultimately was a factor in the MDUSD's decision to close campuses during school hours, installing physical barriers (gates) to deter truancy.

Discussion

It is widely understood that there is a close connection between truancy and juvenile crime committed both by and against minors. Recognizing this correlation, for the past 20 years the Concord Police Department (CPD) has worked cooperatively with the schools of the Mt. Diablo Unified School District to address truancy, thereby enhancing public safety. This has largely been accomplished through the MDUSD "Stay-in-School" (SIS) program. The CPD's primary role in the SIS program is to detain truant minors observed in public places during regular school hours, and transport them back to their host schools. The Officers' legal authority to detain and take temporary custody of truant minors is codified in the California Education Code. However, the absence of a daytime curfew ordinance in the Municipal Code limits the CPD law enforcement role to the "detention and return to school" functions. The schools are responsible for initiating disciplinary action (if any) against truants, and no police-initiated criminal sanctions (i.e.; fines) attach when a minor is detained in public for truancy. SIS enforcement by CPD Officers is time consuming, costly, and competes with higher-priority calls for police service.

The Concord Police Department recently was directed by the Council to research the current extent of truancy in Concord and its impact on public safety, as well as its consumption of City resources and services. Research obtained from the California Department of Education shows that truancy rates in Concord are higher than the state average and even the Mt. Diablo Unified School District average. The truancy rates in Concord's high schools are particularly high, especially in the downtown area schools, such as Mt. Diablo High School and Olympic High School. These high rates were underscored when CPD personnel conducted five truancy (SIS) sweeps during the first five months of 2011. Each monthly sweep lasted about four hours and occurred while public schools were in session (0800-1200 AM). In total, approximately 204 truant students were detained and taken back to their schools. This equated to an average of 41 truant students being detained during each four-hour SIS sweep.

CPD research linked incidents of daytime vandalism, fights, thefts, and residential burglaries to truant students. Truants often tend to loiter in and about public places. Frequently, persons going about their lawful business as well as public property become targets of the delinquent behavior of truants when they should be in school. Additionally, minors in these situations are particularly vulnerable to violence and to the pressure to participate in criminal activity. When students are attending school they are under adult supervision. They are therefore less likely to be victimized and lack the opportunity to participate in crime and disorder in the community.

While the MDUSD is responsible under state law for enforcing truancy laws and ensuring student attendance, the City has a compelling public safety interest in reducing the rate of local juvenile crime and victimization that often accompanies truancy. Staff believes that adoption by the City of a daytime curfew

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ordinance would greatly enhance its law enforcement efforts in this regard. As drafted, the proposed daytime curfew ordinance would prohibit minor students (i.e., those subject to compulsory education) from being in public during hours when their respective schools are in session. The ordinance would permit CPD officers to detain truants (after determining that they are under 18 and not subject to any of the exceptions to the ordinance), and on the first offense issue a warning citation, mailing the parent(s) a notification that the minor has been found in violation of the curfew. The parent(s) will then be required to sign and return the notification, including any explanation of an applicable ordinance exception.

Upon any subsequent violations of the daytime curfew ordinance during the same year, the minor will be fined up to \$100 for the first subsequent offense, up to \$200 for the second offense, and up to \$500 for any additional curfew ordinance violations. Parents are required under California law to ensure that their children attend school on a regular basis. Accordingly, as a mechanism to encourage parents to observe this obligation, the ordinance provides that parents who knowingly permit minors to violate the curfew ordinance may also be cited and fined under the same schedule.

It should be noted that the proposed daytime curfew ordinance complements existing CPD practices, since it does not restrict CPD officers from also transporting truants back to school once they are cited.

In drafting the proposed ordinance, CPD and City Attorney's Office staff reviewed existing case law, focusing in particular on the California Court of Appeal decision in *Harrahill v. City of Monrovia* (2002) 104 Cal. App 4th 761, which upheld the City of Monrovia, California's daytime curfew ordinance against a challenge that it was preempted by the truancy provisions of California's Education Code. Staff also analyzed the Ninth Circuit Court of Appeals decision in *Nunez v. City of San Diego* 114 F. 3d 935 (9th Cir. 1997), in which the court struck down San Diego's nighttime curfew ordinance on the grounds that it was vaguely worded, and that it also precluded expressive activity and other constitutionally protected conduct and rights.

Staff additionally reviewed the subsequent daytime/nighttime curfew ordinance adopted by San Diego in response to the *Nunez* decision. The revised San Diego curfew ordinance added exceptions and provisions in direct response to the *Nunez* holding, and to date, it has not been challenged in any courts. Further, staff analyzed daytime and nighttime curfew ordinances adopted by a number of other cities throughout the Bay Area, including Pittsburg, Benicia, El Cerrito, Fairfield, San Pablo, Fremont, Richmond, Hayward and Hercules. Staff also reviewed the Monrovia curfew ordinance, which as noted above, was held to be lawful in purpose and scope.

The proposed City of Concord curfew ordinance attached to this report incorporates language from these respective ordinances that meets the City's goal of providing a law enforcement tool to curb truant crime that is efficient to administer, and that will comprise a vigorous deterrent to students and parents who violate its terms.

It should be noted that although the revisions to Concord's existing curfew ordinance primarily consist of language adding daytime curfew provisions, staff has also modified language in the current nighttime curfew ordinance bringing it into compliance with the *Nunez* decision. Because of the scope of the proposed changes to the City's existing curfew ordinance, the entire article (Article III, CMC Section 66) will be repealed and the proposed ordinance, if adopted, will be codified in its place.

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Prior to moving forward with this ordinance, police staff solicited opinions from Concord high school principals and PTA members to gauge their support for a daytime curfew ordinance. All individuals contacted voiced approval for the concept of a daytime curfew. PD staff also contacted several other Bay Area cities with daytime curfew ordinances, and received favorable feedback and opinion from them as well. Contra Costa County District Attorney Mark Peterson has also expressed his support for a daytime curfew ordinance, and urged all cities in Contra Costa County to adopt similar ordinances.

Fiscal Impact

Ordinance enforcement would result in little to no added cost to the city. CPD officers who issue daytime curfew cites are likely to work shifts which overlap with court appearance dates and times, thus requiring no overtime expenditures. Therefore, staff believes that the implementation and enforcement of a daytime curfew ordinance would likely be cost neutral, with no fiscal impact. With a fine-based ordinance model, some revenue would be generated.

Public Contact

On May 26, 2011, staff publicly presented initial daytime curfew research and findings to the Neighborhood and Community Services Council Committee, which recommended forwarding the proposal to the full Council for review. The agenda has been posted as required by the Brown Act.

Recommendation for Action

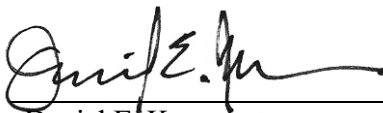
Approve the daytime/nighttime curfew ordinance.

Alternative Courses of Action

1. Retain existing nighttime curfew ordinance;
2. Request staff to submit modified nighttime curfew ordinance;
3. Request staff to modify proposed daytime and nighttime curfew ordinance.

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ORDINANCE NO. 11-4**AN ORDINANCE AMENDING CONCORD MUNICIPAL CODE
CHAPTER 66, (OFFENSES AND MISCELLANEOUS PROVISIONS),
ARTICLE III (CURFEW FOR MINORS)****THE CITY COUNCIL OF THE CITY OF CONCORD DOES ORDAIN AS FOLLOWS:**

Section 1. Concord Municipal Code Chapter 66, (Offenses and Miscellaneous Provisions), Article III (Curfew for Minors) is hereby repealed in its entirety.

Section 2. Concord Municipal Code Chapter 66, (Offenses and Miscellaneous Provisions), Article III (Curfew for Minors) is hereby added to read as follows:

ARTICLE III. CURFEW FOR MINORS**Sec. 66-71. Purpose and Intent.**

(a) The City has a compelling interest in reducing the rate of juvenile crime and victimization. Minors are particularly vulnerable to violence and to the pressure to participate in criminal activity due to their limited ability to make critical decisions in an informed and mature manner. Enactment and enforcement of a daytime and nighttime juvenile curfew reduces the amount of juvenile crime and victimization.

(b) In addition to reducing the rate of juvenile crime and victimization, a daytime curfew also serves to promote the City's compelling interest in prohibiting daytime presence in public places by those subject to compulsory education. State law requires all persons between the ages of 6 and 18 to attend school. Regular school attendance provides important benefits not only to the students themselves but also to the health, safety, and welfare of all residents within the City.

(c) The community as a whole suffers when a minor student is not attending school. Truancy also often leads to vandalism, petty theft, daytime burglaries, and other criminal activity. Truants often tend to loiter in and about public places. Frequently, persons going about their lawful business as well as public property become targets of the delinquent behavior of truants when they should be in school.

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(d) This Article is intended to assist with the policing of public places in the City during specified daytime and nighttime hours, and the prevention of crimes by and against minors during those hours. It is not intended to interfere with or supersede the enforcement of state laws regulating education or truancy or with the Mt. Diablo Unified School District's truancy programs. Rather, this Article is intended to provide the City with an additional proactive intervention tool to protect youth and prevent crime.

Sec. 66-72. Definitions.

The following definitions shall govern the application and interpretation of the curfew regulations set forth in this article.

Nighttime Curfew hours. The hours between midnight to 5:00 a.m. for minors.

Daytime Curfew hours. The period of the minor's regular scheduled school hours when school is in session.

Emergency. An unforeseen combination of circumstances or the resulting state that calls for immediate action. "Emergency" 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 loss of life.

Errand. A trip to carry a message or do a definite lawful thing.

Guardian.

(1) A person who, under court order, is the guardian of the person of a minor; or

(2) A public or private agency with whom a minor has been placed by a court; or

(3) A person who is at least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.

Minor. Any person under 18 years of age.

Parent. A person who is a natural parent, adoptive parent, or step-parent of a minor.

Public place. Any place to which the public has access, including, but not limited to, streets, roads, alleys, trails, sidewalks, parks, recreational areas, public grounds or buildings,

1 vacant lots or buildings, common areas of a school (except during regular school hours), office
2 buildings, transport facilities, restaurants, retail establishments, places of amusement, parking
3 lots, or other unsupervised places.

4 *Responsible Adult.* A person at least 18 years of age and authorized by a parent or
5 guardian to have the care and custody of a minor.

6 **Sec. 66-73. Daytime and Nighttime Curfew and Prohibitions.**

7 Except as provided in section 66-74 below:

8 (1) *Nighttime curfew:* Every minor who is present in, about, or upon any public
9 place during nighttime curfew hours is guilty of an infraction.

10 (2) *Daytime curfew:* Every minor who is subject to compulsory education or to
11 compulsory continuation education who is not in possession of a valid, school issued, off-
12 campus permit giving permission to leave campus or not receiving instruction by a qualified
13 tutor pursuant to Education Code §48224 or not otherwise exempt from attendance at a public
14 or private full-time day school as set forth in the California Education Code, who is present in,
15 about, or on any public place during the daytime curfew hours is guilty of an infraction.

16 (3) Every parent or guardian who knowingly allows or permits a minor to violate
17 any provision of this section is guilty of an infraction.

18 **Sec. 66-74. Exceptions.**

19 The provisions of section 66-73 shall not apply when:

20 (1) The minor is coming directly home from a public meeting, or a place of public
21 entertainment, such as a movie, play, or sporting event. This exception will apply for one-half
22 hour after completion of the event. This exception shall apply to nighttime curfew only;

23 (2) The minor is exercising his First Amendment rights protected by the United
24 States or California Constitutions. This exception shall apply to nighttime curfew only.

25 (3) The minor is authorized to be absent from his or her school pursuant to
26 applicable school rules, or under the provisions of the California Educational Code or any
27 applicable state or federal law. This exception shall apply to daytime curfew only.

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1 (4) The minor is legally employed for the period from one-half hour before to one-
2 half hour after work, while going directly between his home and place of employment. This
3 exception shall also apply if the minor is in a public place during curfew hours in the course of
4 his employment, provided the minor carries a written statement from the employer attesting to
5 the place and hours of employment.

6 (5) The minor is accompanied by his parent, guardian or responsible adult;

7 (6) The minor is on the sidewalk abutting the minor's residence or abutting the
8 residence which is immediately adjacent to his residence.

9 (7) The minor is engaged in an errand directed by his parent or guardian, or by his
10 or her spouse who is 18 years of age or older;

11 (8) The minor is attending an official school, religious or other cultural, educational
12 or recreational activity supervised by adults and sponsored by the City of Concord, a civic
13 organization, or another similar entity or organization that takes responsibility for the minor, or
14 going to or returning home from, without any detour or stop, any official school, religious, or
15 other cultural, educational or recreational activity supervised by adults and sponsored by the
16 City of Concord, a civic organization, or another similar entity or organization that takes
17 responsibility for the minor;

18 (9) The minor is responding to or acting pursuant to an emergency;

19 (10) The minor is in a motor vehicle involved in interstate travel;

20 (11) The minor is emancipated in accordance with the California Family Code or
21 other state or federal law.

22 (12) The minor is going to or coming directly from a school-approved or school
23 related business, trade, profession, occupation or program in which the minor is lawfully
24 engaged, such as a work study or work experience program, subject to verification by a proper
25 school authority.

26 (13) The minor is going directly to or from an event or activity that is directly
27 related to any medical condition of a parent, guardian or spouse who is 18 years or older.

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1 **Sec. 66-75. Enforcement.**

2 (a) A police officer, upon reasonable cause based on articulable facts that an
3 individual is in violation of the curfew regulations, shall detain that individual, ascertain
4 whether the individual is a minor, and if so, determine if the minor has a legitimate reason
5 based on the exceptions detailed in section 66-74 for being in apparent violation of the curfew
6 regulations set forth in this Article.

7 (1) Upon the first violation of the curfew regulations, the police officer
8 shall issue to the minor a warning citation regarding the consequences of a subsequent
9 violation. The Chief of Police or his designee shall mail to the parents or legal guardian
10 of the minor a notification that the minor has been found in violation of curfew
11 regulations, and that any subsequent violation of section 66-73 shall result in the
12 issuance of an infraction to the minor and/or the parents or legal guardian. This notice
13 shall require the parents or legal guardian to sign and return the notification and include
14 space for the explanation of any circumstances relevant to any applicable exception
15 from section 66-73.

16 (2) Upon any subsequent violation of section 66-73, the minor and/or the
17 parents or guardian of the minor shall be charged with an infraction, a conviction of
18 which shall be punished by:

19 (i) A fine not exceeding \$100 for the first violation;

20 (ii) A fine not exceeding \$200 for the second violation within the
21 same twelve (12) month period;

22 (iii) A fine not exceeding \$500 for each addition violation within the
23 same twelve (12) month period.

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1 (3) This section shall not be construed to abridge the authority of a police
2 officer to assume temporary custody, during school hours, of any minor subject to
3 compulsory full time education or compulsory continuing education found away from
4 his or her home and who is absent from school without a valid excuse, and return such
5 minor to their school of registration, pursuant to California Education Code §§ 48264
6 and 48265.

7 (4) This section shall not be construed to limit the authority of the court to
8 render any disposition authorized by Welfare and Institutions Code Section 258,
9 subdivision (a), or any other provision of the Juvenile Court Law.

10 **Sec. 66-76. Severability.**

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

19 **Secs. 66-77—66-100. Reserved.**

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Section 3. This Ordinance No. 11-4 shall become effective thirty (30) days following its passage and adoption. In the event a summary of said Ordinance is published in lieu of the entire Ordinance, a certified copy of the full text of this Ordinance shall be posted in the office of the City Clerk at least five (5) days after its passage and adoption, including the vote of the Councilmembers, in the Contra Costa Times, a newspaper of general circulation in the City of Concord.

Laura M. Hoffmeister
Mayor

ATTEST

Mary Rae Lehman, CMC
City Clerk

(Seal)

Ordinance No. 11-4 was duly and regularly introduced at a regular joint meeting of the City Council and Redevelopment Agency held on July 12, 2011, and was thereafter duly and regularly passed and adopted at a regular joint meeting of the City Council and Redevelopment Agency held on July 26, 2011, by the following vote:

AYES: Councilmembers -

NOES: Councilmembers -

ABSTAIN: Councilmembers -

ABSENT: Councilmembers -

I HEREBY CERTIFY that the foregoing is a true and correct copy of and ordinance duly and regularly introduced, passed, and adopted by the City Council of the City of Concord, California.

Mary Rae Lehman, CMC
City Clerk