# SAFETY ADVISORY AND TRANSPORTATION COMMITTEE
# A G E N D A

**FEBRUARY 29, 2012 - 5:00 P.M.**

**CITY HALL CONFERENCE ROOM**
**15 LOOCKERMAN PLAZA**
**DOVER, DELAWARE**

***Public comments are welcomed on any item and will be permitted at appropriate times. When possible, please notify the City Clerk (736-7008 or e-mail at CityClerk@dover.de.us) should you wish to be recognized.***

AGENDA ADDITIONS/DELETIONS

1. Presentation - Silver Lake to Isaacs Branch Trail Concept

2. Announcement of Road Closures *(Gary Laing)*

3. Discussion - Establishing City Emergency Operations Center *(January 23, 2012 - Committee Recommended Referral Back to Staff for a Report to the Committee at the Next Committee Meeting)*

4. Proposed Ordinances
   A. #2012-06 Creating a New Chapter 59 - Juvenile Curfew
   B. #2012-08 Amending Chapter 70 - Offenses and Miscellaneous Provisions

5. Update - Dover High School Construction

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*THE AGENDA ITEMS AS LISTED MAY NOT BE CONSIDERED IN SEQUENCE. THIS AGENDA IS SUBJECT TO CHANGE TO INCLUDE THE ADDITION OR THE DELETION OF ITEMS, INCLUDING EXECUTIVE SESSIONS.*

# Memorandum

**Office of the City Manager**
**PO Box 475**
**Dover, DE 19903**
**Phone: (302) 736-7005**
**FAX: (302) 736-7002**
**E-mail: skoenig@dover.de.us**

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**To:** **Safety, Advisory and Transportation Committee**

**From:** **Scott D. Koenig, P.E.**
**City Manager**

**Date:** **February 22, 2012**

**Subject:** **Establishing City Emergency Operations Center**

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Staff is still reviewing and compiling the documentation for establishing the city emergency operations center. Revisions and recommendations will be handed out during the next Safety Advisory and Transportation Committee meeting scheduled for February 29, 2012.

# ACTION FORM

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| **PROCEEDING**: Safety Advisory and Transportation Committee MEETING DATE: 02/29/2012 |
| **DEPARTMENT OF ORIGIN**: City Council |
| **PREPARED BY**: Traci A. McDowell, City Clerk, on behalf of Councilman William F. Hare |
| **DATE SUBMITTED:** February 20, 2012 |

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|---|
| **SUBJECT**: Request for Amendment to City of Dover Code of Ordinances - New Chapter 59 - Juvenile Curfew |
| **RELATED PROJECT**: None |
| **APPROVALS**: SA&T Committee and City Council |
| **EXHIBITS**: Proposed Ordinance #2012-06 |
| **EXPENDITURE REQUIRED**: N/A **AMOUNT BUDGETED**: N/A<br>**FUNDING SOURCE (Dept./Page in CIP & Budget)** N/A |
| **TIMETABLE**: Committee recommendation to City Council on March 12, 2012 for review and First Reading, Final Reading and Adoption on March 26, 2012. |

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| **RECOMMENDED ACTION**: Adoption of Ordinance #2012-06 Amending the City of Dover Code of Ordinance by Inserting a New Chapter 59 - Juvenile Curfew. |

## BACKGROUND AND ANALYSIS

At the request of Councilman Hare, a draft proposed ordinance which mimics the City of Milford, Delaware's juvenile curfew ordinance, was drafted for the Committee's consideration.

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# CITY OF DOVER PROPOSED ORDINANCE #2012-06

**BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DOVER, IN COUNCIL MET:**

That the Dover Code of Ordinances be amended by inserting a new Chapter 59 - Juvenile Curfew, to read as follows:

Chapter 59 - JUVENILE CURFEW

Sec. 59-1. - Definitions.

When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular, and words in the singular number include the plural. The word "shall" is always mandatory and not merely directory. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*City* means the City of Dover, Delaware, with administrative offices at 15 Loockerman Plaza, Dover, Delaware.

*Emergency* means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, natural disaster, automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

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

*Juvenile* or *Minor* means any unemancipated person under the age of 17 or, in equivalent phrasing often herein employed, any person 16 or fewer years of age.

*Operator* means any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.

*Parent* means any person having legal custody of a juvenile:

(1) As a natural or adoptive parent.

(2) As a legal guardian.

(3) As a person who stands in loco parentis.

(4) As a person to whom legal custody has been given by court order.

*Public Place* means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, common areas of schools, shopping centers, parking lots, parks, playgrounds, transportation facilities, theaters, restaurants, shops, bowling alleys, taverns, cafes, arcades,

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and similar areas that are open to the use of the public. As a type of public place, a street is a way or place, of whatever nature, open to the use of the public as a matter of right for purposes of vehicular travel or, in the case of a sidewalk thereof, for pedestrian travel. "Street" includes that legal right-of-way, including, but not limited to, the cartway of traffic lanes, the curb, the sidewalks, whether paved or unpaved, and any grass plots or other grounds found within the legal right-of-way of a street.

*Remain* means to stay behind, to tarry, and to stay unnecessarily in a public place, including the congregating of groups (or of interacting minors) totaling four or more persons in which any juvenile involved would not be using the streets for ordinary or serious purposes such as mere passage or going home, or to fail to leave the premises of an establishment when requested to do so by a police officer or the operator of an establishment. To implement this provision with additional precision and precaution, numerous exceptions are expressly defined in this chapter. More exceptions become available with a juvenile's increasing years and advancing maturity as appropriate in the interest of reasonable regulation.

*Time of Night* means based upon the prevailing standard of time, whether Eastern standard time or Eastern daylight savings time, generally observed at that hour by the public in the city, prima facie the time then observed in the city administrative offices and police station.

*Years of Age* means continues from one birthday, such as the 16th, to (but not including the day of) the next, such as the 17th birthday, making it clear that 16 or fewer years of age is herein treated as equivalent to the phrase "under 17 years of age." Similarly, for example, 11 or fewer years of age means "under 12 years of age."

Sec. 59-2. - Curfew established.

(a) *School year curfew*. It shall be unlawful for any person 16 years or fewer of age (under 17) to be or remain in or upon a public place within the City of Dover during the Caesar Rodney/Capital School District designated school year for the period ending at 6:00 a.m. and beginning:

(1) At 12:00 midnight on Friday and Saturday nights; and

(2) At 11:00 p.m. on all other nights.

(b) *Summer curfew*. It shall be unlawful for any person 16 years or fewer of age (under 17) to be or remain in or upon a public place within the City of Dover during the Caesar Rodney/Capital School District designated summer break for the period ending at 6:00 a.m. and beginning:

(1) At 1:00 a.m. on Friday and Saturday nights; and

(2) At 12:00 midnight on all other nights.

Sec. 59-3. - Exceptions.

(a) The following shall constitute valid exceptions to the operation of this chapter:

(1) *Accompanied by parent*. When a juvenile is accompanied by a parent of such juvenile.

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(2) *Accompanied by authorized adult*. When a juvenile is accompanied by an adult authorized by a parent of such juvenile to take said parent's place in accompanying said juvenile for a designated period of time and purpose within a specified area.

(3) *Errand directed, in writing, by parent*. When the juvenile is on an errand as directed by his/her parent, provided that such juvenile shall have on his/her person a written note, signed by the juvenile's parent, stating:

a. The date and time that the note was written (which shall not be more than 24 hours before the time of the errand);

b. The name of the juvenile;

c. The name, address, and telephone number of the parent; and

d. The specific errand directed by the parent.

(4) *Emergency*. When a juvenile is assisting in an emergency, including, by way of example and not in limitation, responding as a member of a volunteer fire company to a fire company or paramedic call.

(5) *First amendment rights*. When a juvenile is exercising first amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly, by first delivering, to the person designated by the city's chief of police to receive such information, a written communication, signed by the juvenile and countersigned, if practicable, by a parent of the juvenile, with his/her home address and telephone number, specifying when, where, and in what manner the juvenile will be in a public place during hours when this chapter is applicable to said minor in the exercise of a first amendment right specified in such communication.

(6) *Reasonable necessity*. In case of reasonable necessity for the juvenile remaining in a public place, but only after the juvenile's parent has communicated to the chief of police or the person designated by the chief of police to receive such notifications the facts establishing the reasonable necessity relating to a specified public place at a designated time for a described purpose, including points of origin and destination. A copy of the communication, or of the police record thereof, duly certified by the chief of police to be correct, with an appropriate notation of the time it was received and of the names and addresses of the parent and juvenile, shall be admissible evidence.

(7) *On own or neighbor's property*. When a juvenile is on the sidewalk or property where the juvenile resides, or on either side of or across the street from the place where the juvenile resides, and the adult owner or resident of that property has given permission for the juvenile to be there.

(8) *Returning home within one hour of official activity*. When a juvenile is returning home from, and within one hour of, the termination or closing of an official school, religious, or other recreational activity supervised by adults, sponsored by the City of Dover, a recognized charitable, benevolent, or civic association, or a similar entity that takes responsibility for the minor.

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(9) *Special permit (individual)*. When authorized by special permit from the chief of police carried on the person of the juvenile thus authorized, as follows:

a. When necessary nighttime activities of a juvenile may be inadequately provided for by other provisions of this chapter, then recourse may be had to the chief of police, either for a regulation as provided in subsection (a)(10) or for a special permit as the circumstances warrant.

b. Upon a finding of undue hardship and reasonable necessity for the use of a public place to the extent warranted by a written application signed by a juvenile and by a parent of the juvenile, if feasible, stating: the name, age, and address of the juvenile; the name, address, and telephone number of a parent thereof; the height, weight, sex, color of eyes and hair, and other physical characteristics of the juvenile; the necessity that requires the juvenile to remain upon a public place during the curfew hours otherwise applicable and the undue hardship that will result if such permit is not granted; the public place; and the beginning and ending of the period of time involved, by date and hour, the chief of police may grant a permit, in writing, for the juvenile's use of a public place at such hours as in the opinion of the chief of police may reasonably be necessary and consistent with the purposes of this chapter. In an emergency, this may be handled by prior telephone or other effective communication, with a corresponding record being made contemporaneously by the chief of police or by the person designated by the chief of police to act on his/her behalf in an emergency at the police station.

(10) *Special regulation (group)*. When authorized by regulation issued by the chief of police in other similar cases of reasonable necessity, similarly handled but adapted to reasonably necessary nighttime activities of more juveniles than can readily be dealt with on an individual special permit basis, but only where such juveniles will be under the active supervision of adults responsible for such juveniles. Normally such regulation by the chief of police permitting use of public places should be issued sufficiently in advance to permit appropriate publicity through news media and through other agencies, such as the schools, and shall define the activity, the scope of the use of the public places permitted, the period of time involved, not to extend more than one hour beyond the time for termination of the activity, and the reason for finding that the regulation is reasonably necessary and is consistent with the purposes of this chapter.

(11) *Employment necessity*. When the juvenile is legally employed, going to or returning home from employment, and carries a certified card of employment, renewable each calendar month when the current facts so warrant, dated or reissued not more than 45 days previously, signed by the parent and employer and briefly identifying the juvenile, the addresses and telephone numbers of the juvenile's home and place of employment, and the juvenile's hours of employment. The city shall prepare a form to be used by employers for purposes of this subsection.

(12) *Interstate or intrastate travel*. When the juvenile is, with parental consent, engaged in normal interstate or intrastate travel through the city or originating or terminating in the city.

(13) *Married*. When the juvenile is married or has been married pursuant to state law.

(14) *Operator of establishment*. In the case of an operator of an establishment, when the operator has

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notified the police that a juvenile was present on the premises of the establishment during curfew hours and refused to leave.

(b) *Continuing consideration of exceptions*. Each of the foregoing exceptions and their several limitations, such as provisions for notification, are severable, as hereinafter provided but here reemphasized, and will be considered by Council when warranted by future experience.

Sec. 59-4. - Parental responsibility.

(a) The foregoing exceptions to the operation of this chapter shall act only to create a waiver of enforcement and affirmative defense(s) to such enforcement. By authorizing such exceptions, neither the city nor any member of the police department shall assume any affirmative obligation or duty to supervise the well-being of any juvenile acting pursuant to such authorized exception.

(b) It shall be unlawful for a parent having legal custody of a juvenile knowingly to permit or by inefficient control to allow the juvenile to remain in any city public place under circumstances not constituting an exception to, or otherwise beyond the scope of, this chapter. 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) It shall be unlawful for any parent to knowingly (as defined above) provide any false authorization, information or certification, written or verbal, to the Dover police department in order to obtain an exception to the operation of this chapter under Sec. 59-3 hereof.

Sec. 59-5. - Operator responsibility.

It shall be unlawful for any operator of an establishment to knowingly permit a juvenile to remain at the establishment under circumstances not constituting an exception to, or otherwise beyond the scope of, this chapter. The term "knowingly" includes knowledge that an operator should reasonably be expected to have concerning the patrons of the establishment. The standard for "knowingly" shall be applied through an objective test: whether a reasonable person in the operator's position should have known that the patron was a juvenile in violation of this chapter.

Sec. 59-6. - Enforcement.

(a) If a police officer reasonably believes that a juvenile is in a public place in violation of this chapter, the officer shall notify the juvenile that he/she is in violation of this chapter and shall require the juvenile to provide his/her name, address, and telephone number and how to contact his/her parent or guardian. 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 chapter, use his/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 or guardian of the juvenile written notice of the violation pursuant to subsection (f) hereof.

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(c) Police procedures shall constantly be refined in the light of experience and may provide that the police officer may deliver to a parent or guardian thereof 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 subsection (b) of this section, when a juvenile has received one previous written warning for violation of this chapter or 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 or guardian shall immediately be notified to come for the juvenile, whereupon the parent or guardian 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 accurate, effective, fair, impartial, and uniform enforcement and recording, thus making available experienced personnel and access to information and records.

(e) When a parent or guardian, 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 or guardian assume the responsibility of caring for the juvenile pending the availability or arrival of a parent or guardian.

(f) In the case of a first violation of this chapter by a juvenile, the chief of police shall, by certified mail, send to a parent or guardian written notice of the violation, with a warning that any subsequent violation will result in full enforcement of this chapter, including enforcement of parental responsibility and of applicable penalties.

(g) For the first violation of this chapter by an 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 the chapter, including enforcement of operator responsibility and of applicable penalties.

(h) In any event the police officer shall, within 24 hours, file a written report with the chief of police or shall participate, to the extent of the information for which he/she is responsible, in the preparation of a report on the curfew violation. It is not the intention of this section to require extensive reports that will prevent police officers from performing their primary police duties. The reports shall be as simple as is reasonably possible and may be completed by police department personnel other than sworn police officers.

Sec. 59-7. - Violations and penalties.

(a) *Parents*.

(1) *Offenses by the parent*. If, after the warning notice pursuant to Sec. 59-6 of a first violation by a juvenile, a parent violates Sec. 59-4 (in connection with a second violation by the juvenile), this shall be treated as a first offense by the parent. For offenses by a parent, the fines shall be as provided for in Appendix F - Fees and Fines. [First offense by a parent - $50, and for each

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subsequent offense by a parent the fine shall be increased by an additional $20: e.g., $70 for the second offense and $90 for the third offense.[Locate in Appendix F] Any court of competent jurisdiction, upon finding a parent guilty, shall sentence the parent to pay this fine and the cost of prosecution.

(2) *Personnel costs.* The parent or legal guardian having custody of a juvenile subject to this section shall be liable for all costs incurred by the City of Dover for providing personnel to remain in the company of a juvenile who has been detained as a curfew violator if the parent or guardian does not pick up the juvenile within one hour after receiving notice from the city that the city is detaining the juvenile for a curfew violation. The amount to be paid by the parent or guardian shall be as provided for in Appendix F - Fees and Fines. [Locate in Appendix F] [based on the hourly wage of the city employee who is assigned to remain with the juvenile plus the cost of benefits for that employee.]

(3) The parent or legal guardian having custody of a juvenile subject to this section shall be liable for any fine or condition of restitution or reparation imposed by a court upon a curfew violator, provided that the curfew violator has not paid the fine or made restitution or reparation within the time ordered by the court and further provided that the parent or legal guardian has been made a party defendant in all enforcement proceedings against the curfew violator and shall be served with all citations, summons, complaints, notices, and other documents required to be served on the curfew violator defendant.

(b) *Juveniles*. Any juvenile who shall violate any of the provisions of this chapter more than three times shall be reported by the chief of police to the juvenile authorities as a juvenile in need of supervision, and the chief of police may proceed to file such charges with the courts as he/she may deem appropriate.

(c) *Operators*. If, after the warning notice pursuant to Sec. 59-6 of a violation of this chapter, an operator of an establishment violates Sec. 59-5 a second time, this shall be treated as a first offense by the operator. For offenses by an operator, the fines shall be as provided for in Appendix F - Fees and Fines. [Locate in Appendix F] [$50, and for each subsequent offense by an operator the fine shall be increased by an additional $20: e.g., $70 for the second offense and $90 for the third offense.]

(d) *False certification*. Any parent convicted of knowingly providing any false authorization, information or certification, written or verbal, to the Dover police department in violation of Sec. 59-4(c) shall pay a fine as provided for in Appendix F - Fees and Fines. [Locate in Appendix F] [$50 for the first offense, and for each subsequent offense the fine shall be increased by an additional $20, plus costs.]

Sec. 59-8. - Advisory opinions.

The city manager, after consultation with the city solicitor, is hereby authorized to give advisory opinions, in writing, which shall be binding and shall be adhered to by the police until the chapter is amended in such respect, interpreting terms, phrases, parts, or any provisions. Normally such advisory opinions shall be in response to good faith, signed letters addressed to the city manager or to a member of the city council questioning this chapter as ambiguous, having a potentially chilling effect on constitutional rights specifically invoked or otherwise invalid, in all three categories with respect to proposed conduct definitely described. This administrative remedy must be exhausted prior to presenting to any court a question in any of the three categories. The city council does not intend a result through the enforcement of this chapter that

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is absurd, impossible of execution, or unreasonable. Council intends that the chapter be held inapplicable in such cases if anywhere its application would be unconstitutional under the Constitution of the State of Delaware or the Constitution of the United States of America.

Sec. 59-9. - Continuing evaluation.

The city council shall continue its evaluation and updating of this chapter through methods including but not limited to the following:

(a) Within six months after the implementation of this chapter, the chief of police shall provide the city council with a report concerning the effect of this chapter on crimes committed by and against minors and of the number of warnings issued and arrests of minors, parents, and operators hereunder and such other information as council may request.

(b) On a regular basis, the city council shall receive informal reports of all exceptional cases hereunder of reasonable necessity, the notices of school and other activities, the special permits and the regulations authorized above, and the advisory opinions for consideration by the council in further updating and continuing evaluation of this chapter.

Sec. 59-10. - Notice.

Notice of the existence of this chapter and of the curfew regulations established by it shall be posted in, on, or about such public or quasi-public places as may be determined by the city manager or the police department in order that the public may be constantly informed of the existence of this chapter and its regulations.

City of Dover
Juvenile Curfew Ordinance
Employment Certificate

Pursuant to Sec. 59-3(a) - 11 of the City of Dover Juvenile Curfew Ordinance, this shall certify that:

_____
Juvenile's name

_____
Address

_____
Address

is currently employed by:

_____
Employer's name

_____
Employer's address

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_____
Employer's address

_____
Employer's telephone no.

and that he/she is scheduled to work during the following hours:

Sun. _____ Mon. _____ Tue. _____ Wed. _____

Thur. _____ Fri. _____ Sat. _____

_____
Parent's name (print)

_____ _____
Parent's signature Employer's signature

BE IT FURTHER ORDAINED THAT Appendix F - Fees and Fines, be amended by inserting the text indicated in bold, blue, italics, as follows:

| | | | |
|---|---|---|---|
| ***Chapter 59 - Juvenile Curfew*** | | | |
| | | | |
| ***Sec. 59-7*** | ***Violations and penalties.*** | | |
| | ***Subsec. (a)(1)*** | ***Offenses by the parent*** | ***First offense by a parent - $50; each subsequent offense by a parent shall be increased by an additional $20: e.g., $70 for the second offense and $90 for the third offense.*** |
| | ***Subsec. (a)(2)*** | ***Personnel costs incurred by the City of Dover for providing personnel to remain in the company of a juvenile who has been detained as a curfew violator if the parent or guardian does not pick up the juvenile within one hour after receiving notice from the city that the city is detaining the juvenile for a curfew violation.*** | ***The hourly wage and cost of benefits of the city employee assigned to remain with the juvenile*** |

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| | ***Subsec. (c)*** | ***Operators - Any operator who knowingly permits a juvenile to remain at the establishment under circumstances not constituting an exception*** | ***$50 for first offense by an operator; for each subsequent offense the fine shall be increased by an additional $20: e.g., $70 for the second offense and $90 for the third offense.*** |
| | ***Subsec. (d)*** | ***False certification - Any parent convicted of knowingly providing any false authorization, information or certification, written or verbal, to the Dover police department in violation of Sec. 59-4(c)*** | ***$50 for the first offense; for each subsequent offense the fine shall be increased by an additional $20, plus costs.*** |

ADOPTED: *

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**SYNOPSIS**

The proposed ordinance would establish a juvenile curfew.

(SPONSORS: HARE, ANDERSON, AND BONAR)

Actions History

Feb. 29, 2012 - Scheduled for consideration by the Safety Advisory and Transportation Committee

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CITY OF DOVER
PROPOSED ORDINANCE #2012-08

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DOVER, IN COUNCIL MET:

That Dover Code, Chapter 70 - Offenses and Miscellaneous Provisions be amended to insert a new Section 70-7 - Registered Sexual Offenders:

**70-7. - Registered Sexual Offenders**

(a) *Registration Required*. Sex offenders, as defined under the provisions of 11 Del. C., c. 41, §4120A, shall register their places of residence and employment as required under the provisions of 11 Del. C., c. 41, §4120.

(b) *Prohibition on Residency and Employments*.

(1) Sex offenders assigned as Risk Assessment Tier II or Tier III under the provisions of 11 Del. C., c. 41, §4120, shall be prohibited from residence or employment within 500 feet of a day care center as defined in Appendix B - Zoning, Article 12 - Definitions, of the Dover Code.

(2) Any sex offender assigned as Risk Assessment Tier II or Tier III who maintains residence or employment within 500 feet of a day care center on the date of adoption of this ordinance shall comply with the provisions of the ordinance within 12 months.

(3) Any sex offender who is under 18 years of age and resides with a parent or legal guardian shall be exempt from the provision of subsection (b)(2) of this section.

(c) *Prohibition on rentals and leaseholds*.

(1) It is unlawful for a property owner to knowingly and intentionally with actual knowledge and after being made aware the person is a sexual offender let or rent any place, structure, or part thereof, to a sexual offender, with the knowledge that it will be used as a permanent or temporary residence, if such place, structure or part thereof, is located within 500 feet of any day care center. In any prosecution for a violation of this section it must be shown:

a. That the property owner knowingly and intentionally with actual knowledge and after being made aware the person is a sexual offender let or rented the premises to a person who was a registered sexual offender; and

b. The property owner had actual knowledge that the place, structure, or part thereof would be used by the registered sexual offender as a permanent or temporary residence of property located within the residential zoning classification.

Nothing herein shall be deemed to require the property owner to make any independent determination whether the person is a sexual offender.

(2) *Exclusions*. A sexual offender abiding, lodging, or residing in a permanent or temporary residence within 500 feet of any day care center does not commit a violation of this section provided the sexual offender is in full compliance with probation, parole, or conditional release, and does not commit another sexual offense, and is in compliance with the residency restrictions, if any of the following:

a. The sexual offender was a minor when committing the offense causing the designation as a sexual offender and was not sentenced as an adult for that offense.

b. The sexual offender is under the age of 18.

c. The day care center was opened or established after the sexual offender established the permanent residence; and the residence was reported and registered.

It is not the intent of this article to impair valid, existing and bona fide contract rights, provided however that the provisions of this article shall apply upon final termination. Extensions or renewals of any leasehold relationship is prohibited. When a person who is the subject of this article changes residences, this article shall fully apply to such persons.

(d) *Measurement of distance*.

For purposes of measuring separation of a residence from a day care center, all distances shall be measured from the entrances and exits of the residence or place of employment running in a direct line to the outermost entrances and exits of the day care center.

(c) *Prohibited Activities for Sexual Offenders.*

1. It is unlawful for any Sexual Offender to participate in a holiday event or practice involving children under 18 years of age, such as distributing candy or other items to children on Valentine's Day, Halloween, Christmas, or any other holiday or event. Participation is to be defined as attendance at, or taking part of, or cooperation with an event.

2. It is unlawful for any Sexual Offender to wear costumes for the primary purpose of entertaining, attracting, or encouraging interaction with children.

3. Any person designated a sexual offender shall be required on October thirty-first of each year or any other day upon which Halloween is celebrated to:

(i) Avoid all Halloween related contact with children;

(ii) Post a sign at his/her residence stating, "No candy or treats at this residence." Such signs shall be in letters at least two inches high and shall be legible from the street or road adjacent to the residence;

(iii) Except for lighting provided on a year round basis by a sexual offender or the owner or manager of a multi-family residential unit for the purpose of security or walkway or hallway illumination, all outside residential lighting shall be off during the evening hours after 5:00 p.m., and no exterior holiday decorations shall be exhibited on the sexual offender's residence or on the property upon which the residence is located.

4. Holiday events or practices in which the sexual offender is the parent or guardian of the child or children involved, and where no non-familial children are present, are exempt from this section.

(d) Penalties. Any person who violates this ordinance shall be fined in accordance with Appendix F - Fees and Fines, Section 70-7. Every day that a violation occurs shall constitute a separate offense.

BE IT FURTHER ORDAINED That Appendix F- Fees and Fines be amended by adding a new Section 70-7 under Chapter 70 - Offences and Miscellaneous Provisions as follows:

| Sec. 70-7 | Registered Sexual Offenders | | |
|---|---|---|---|
| | Subsec. (d) | Penalties | $500.00 for any offense; each day shall constitute a separate offense. |

ADOPTED: *

SYNOPSIS

The proposed ordinance would prohibit registered Tier II and Tier III sex offenders from living or working within 500 feet of a daycare center and from participating certain events involving children.

(Sponsors: Lynn, *, *)

Actions History:
Feb. 29, 2012 - Scheduled for consideration by Safety Advisory and Transportation Committee