



# Agenda

# PUBLIC PROTECTION COMMITTEE

November 7, 2011

**NOTE TIME CHANGE! \*\*\*\*\* 12:00 P.M.**

651 Pine Street, Room 101, Martinez

Supervisor Federal D. Glover, Chair

Supervisor Gayle B. Uilkema, Vice Chair

## Agenda Items:

Items may be taken out of order based on the business of the day  
and preference of the Committee

1. Introductions
2. Public comment on any item under the jurisdiction of the Committee and not on this agenda (speakers may be limited to three minutes)
3. CONSIDER report and recommendation from the District Attorney to enact a daytime curfew ordinance in the county unincorporated area
4. CONSIDER accepting status report from the Employment and Human Services Department and District Attorney's Office on welfare fraud investigation and prosecution

*The Public Protection Committee will provide reasonable accommodations for persons with disabilities planning to attend Public Protection Committee meetings. Contact the staff person listed below at least 72 hours before the meeting.*

*Any disclosable public records related to an open session item on a regular meeting agenda and distributed by the County to a majority of members of the Public Protection Committee less than 96 hours prior to that meeting are available for public inspection at 651 Pine Street, 10th floor, during normal business hours.*

*Public comment may be submitted via electronic mail on agenda items at least one full work day prior to the published meeting time.*

**For Additional Information Contact:**

Julie Enea, Committee Staff  
Phone (925) 335-1077, Fax (925) 646-1353  
Julie.Enea@cao.cccounty.us

## DISTRIBUTION

### Staff Subscribers:

Members of the Board of Supervisors  
David Twa, County Administrator  
Terry Speiker, Chief Asst. County Administrator  
Sharon Anderson, County Counsel  
Lisa Driscoll, County Finance Director  
Dorothy Sansoe, Senior Deputy County Administrator—Health & Welfare  
Timothy Ewell, Senior Deputy County Administrator—Municipal Services  
David Livingston, Sheriff-Coroner  
Mike Casten, Undersheriff  
Daryl Louder, Chief, Contra Costa County Fire Protection District  
Hugh Henderson, Chief, East Contra Costa Fire Protection District  
Mark Peterson, District Attorney  
Robin Lipetzky, Public Defender  
Philip Kader, County Probation Officer  
Vincent Guise, Agricultural Commissioner/Weights & Measures Director  
Glenn Howell, Animal Services Director  
Haven Fearn, Health Services Department  
David Fraser, Supervisor Glover's Office  
Steve Dexter, Supervisor Uilkema's Office  
Terrance Cheung, Supervisor Gioia's Office  
Karyn Cornell, Supervisor Piepho's Office  
Cynthia Harvey, Supervisor Gioia's Office  
Alison Olsen, Supervisor Piepho's Office  
Pat Frost, County Emergency Medical Services Director

### Information:

Joe Valentine, EHS Director  
Mike Roetzer, EHS Director of Administration  
Christina Ro, Deputy County Counsel

### Public Subscribers:

FAX to Grand Jury Foreman, (925) 646-1494  
FAX to Laotian Organizing Project, (510) 236-4572  
Jim Bickert, Deputy Sheriff's Association, cocodsa@comcast.net  
Don Flint, dflint@klsglobal.com  
Bob Mankin, bob@cadpros.com  
Ruth Roberts, rroberts@brentwoodpress.com  
Gaylin Zeigler, gzeig@sbcglobal.net  
Calista Anderson, ca1800todb@sbcglobal.net  
Rick Marchoke, rmarchoke@ci.antioch.ca.us  
Jason@outdoorheritage.org  
Donna Reynold, donna@badrap.org  
Anne Williams, annesq@comcast.net  
William Richardson, wrrichardson@earthlink.net  
Barbara Guise, Healthhut161@hotmail.com  
Joseph Partansky, accessjoep@yahoo.com  
Henry Clark, HenryC11@prodigy.net  
Cliff Costa, cliff.costa@asm.ca.gov  
Devone Boggan, City of Richmond  
Ginny Velasquez, ginny.velasquez@teampersona.com  
Jason@outdoorheritage.org  
Sharon Moreland, morelan1@ix.netcom.com  
Erin Campbell DVM, erin@houndtogs.com  
Bill Richardson, wrrichardson@earthlink.net  
Lisa Vorderbrueggen, lvorderbrueggen@bayareanewsgroup.com  
Luis Quinonez, luis.quinonez@asm.ca.gov  
Maurice Delmer, Maurice.Delmer@asm.ca.gov

## Glossary of Acronyms, Abbreviations, and other Terms (in alphabetical order):

Contra Costa County has a policy of making limited use of acronyms, abbreviations, and industry-specific language in its Board of Supervisors meetings and written materials. Following is a list of commonly used language that may appear in oral presentations and written materials associated with Board meetings:

---

|           |   |            |   |
|-----------|---|------------|---|
| <b>AB</b> | Assembly Bill   | HCD        | (State Dept of) Housing & Community Development           |
| ABAG      | Association of Bay Area Governments   | HHS        | Department of Health and Human Services                   |
| ACA       | Assembly Constitutional Amendment   | HIPAA      | Health Insurance Portability and Accountability Act       |
| ADA       | Americans with Disabilities Act of 1990   | HIV        | Human Immunodeficiency Syndrome                           |
| AFSCME    | American Federation of State County and Municipal Employees                     | HOV        | High Occupancy Vehicle                                    |
| AICP      | American Institute of Certified Planners  | HR         | Human Resources   |
| AIDS      | Acquired Immunodeficiency Syndrome  | HUD        | United States Department of Housing and Urban Development |
| ALUC      | Airport Land Use Commission   | Inc.       | Incorporated  |
| AOD       | Alcohol and Other Drugs   | IOC        | Internal Operations Committee                             |
| BAAQMD    | Bay Area Air Quality Management District  | ISO        | Industrial Safety Ordinance                               |
| BART      | Bay Area Rapid Transit District   | JPA        | Joint (exercise of) Powers Authority or Agreement         |
| BCDC      | Bay Conservation & Development Commission                                       | Lamorinda  | Lafayette-Moraga-Orinda Area                              |
| BGO       | Better Government Ordinance   | LAFCo      | Local Agency Formation Commission                         |
| BOS       | Board of Supervisors  | LLC        | Limited Liability Company                                 |
| CALTRANS  | California Department of Transportation   | LLP        | Limited Liability Partnership                             |
| CalWIN    | California Works Information Network  | Local 1    | Public Employees Union Local 1                            |
| CalWORKS  | California Work Opportunity and Responsibility to Kids                          | LVN        | Licensed Vocational Nurse                                 |
| CAER      | Community Awareness Emergency Response  | MAC        | Municipal Advisory Council                                |
| CAO       | County Administrative Officer or Office   | MBE        | Minority Business Enterprise                              |
| CCHP      | Contra Costa Health Plan  | M.D.       | Medical Doctor  |
| CCTA      | Contra Costa Transportation Authority   | M.F.T.     | Marriage and Family Therapist                             |
| CDBG      | Community Development Block Grant   | MIS        | Management Information System                             |
| CEQA      | California Environmental Quality Act  | MOE        | Maintenance of Effort                                     |
| CIO       | Chief Information Officer   | MOU        | Memorandum of Understanding                               |
| COLA      | Cost of living adjustment   | MTC        | Metropolitan Transportation Commission                    |
| ConFire   | Contra Costa Consolidated Fire District   | NACo       | National Association of Counties                          |
| CPA       | Certified Public Accountant   | OB-GYN     | Obstetrics and Gynecology                                 |
| CPI       | Consumer Price Index  | O.D.       | Doctor of Optometry                                       |
| CSA       | County Service Area   | OES-EOC    | Office of Emergency Services-Emergency Operations Center  |
| CSAC      | California State Association of Counties  | OSHA       | Occupational Safety and Health Administration             |
| CTC       | California Transportation Commission  | Psy.D.     | Doctor of Psychology                                      |
| dba       | doing business as   | RDA        | Redevelopment Agency                                      |
| EBMUD     | East Bay Municipal Utility District   | RFI        | Request For Information                                   |
| EIR       | Environmental Impact Report   | RFP        | Request For Proposal                                      |
| EIS       | Environmental Impact Statement  | RFQ        | Request For Qualifications                                |
| EMCC      | Emergency Medical Care Committee  | RN         | Registered Nurse  |
| EMS       | Emergency Medical Services  | SB         | Senate Bill   |
| EPSDT     | State Early Periodic Screening, Diagnosis and treatment Program (Mental Health) | SBE        | Small Business Enterprise                                 |
| et al.    | et ali (and others)   | SWAT       | Southwest Area Transportation Committee                   |
| FAA       | Federal Aviation Administration   | TRANSPAC   | Transportation Partnership & Cooperation (Central)        |
| FEMA      | Federal Emergency Management Agency   | TRANSPLAN  | Transportation Planning Committee (East County)           |
| F&HS      | Family and Human Services Committee   | TRE or TTE | Trustee   |
| First 5   | First Five Children and Families Commission (Proposition 10)                    | TWIC       | Transportation, Water and Infrastructure Committee        |
| FTE       | Full Time Equivalent  | VA         | Department of Veterans Affairs                            |
| FY        | Fiscal Year   | vs.        | versus (against)  |
| GHAD      | Geologic Hazard Abatement District  | WAN        | Wide Area Network   |
| GIS       | Geographic Information System   | WBE        | Women Business Enterprise                                 |
|           |   | WCCTAC     | West Contra Costa Transportation Advisory Committee       |

## 2011 PUBLIC PROTECTION COMMITTEE

### STATUS REPORT FROM THE DISTRICT ATTORNEY ON THE DEVELOPMENT OF A DAYTIME CURFEW ORDINANCE TO REDUCE TRUANCY

#### Background

The PPC took this item up as a referral at the request of the District Attorney, who suggested under Public Comment at the April 4 PPC meeting that the Committee consider enacting a daytime curfew ordinance to reduce truancy and consider the use of gang injunctions to help prevent gang violence.

PPC received an in-depth report on May 2 and decided to pursue an ordinance for a daytime curfew for minors. Within two months of the May 2 PPC meeting, the City of Concord enacted a daytime curfew ordinance, which is proposed today by the District Attorney as a model for a county unincorporated area ordinance.

Following are highlights of the Concord daytime curfew ordinance:

- Defines daytime curfew hours as the period of the minor's regular scheduled school hours when school is in session, and nighttime curfew hours as the hours between midnight and 5:00 a.m. for minors (persons under the age of 18).
- Provides that any minor who is present in or about a public place during curfew hours is guilty of an infraction, and any parent who knowingly permits a minor to violate the curfew is also guilty of an infraction.
- Would permit officers to detain truants and, on first offense, issue a warning citation to their parents, who would have to sign and return the notification with an explanation, if there is one.
- Upon subsequent violations during the same 12-month period, 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 violations. Parents who knowingly permit minors to violate the curfew can also be cited and fine under the same schedule.
- States that officers can transport the truants back to school once they are cited.
- Provides a list of reasonable exceptions.

Attached is a report with recommendations from the District Attorney, supported by the City of Concord's ordinance and working documents on the development of an ordinance, for the Committee's consideration.

Staff from the District Attorney's Office will be in attendance to present the report and answer any questions of the Committee.

Mark A. Peterson  
District Attorney

OFFICE OF THE  
**CONTRA COSTA COUNTY**  
**DISTRICT ATTORNEY**  
900 Ward Street  
Martinez, California 94553

**TO:** Contra Costa County Board of Supervisors Public Protection Committee

**FROM:** Mark Peterson, District Attorney

**DATE:** September 20, 2011

**SUBJECT:** School Hours Curfew

---

A school hour curfew ordinance gives law enforcement officers the ability to regulate juvenile activity during school hours by prohibiting the presence of unsupervised minors in public places during normal school hours. Thus, a school hour curfew ordinance for juveniles can prevent crime, while simultaneously encouraging students to attend school. In recognition of this, several Contra Costa County cities, including Pittsburg, Richmond, El Cerrito, San Pablo, Hercules, Pinole, Martinez, and Concord, have already enacted a school hour curfew ordinance.

**Immediate Effects of Truancy on Crime:**

The high correlation between truancy and crime is well established. Put simply, students not in school during school hours are at a much higher risk of becoming perpetrators or victims of crime. A report compiled by the Los Angeles County Office of Education on factors contributing to juvenile delinquency concluded that chronic absenteeism is the most powerful predictor of delinquent behavior.<sup>1</sup>

In Contra Costa County, police reported that 60 percent of juvenile crime occurred between 8 a.m. and 3 p.m. on weekdays.<sup>2</sup> During the first 5 months of 2011, the

---

<sup>1</sup> B. Shuster, "L.A. School Truancy Exacts a Growing Social Price," *Los Angeles Times*, June 28, 1995, sec. A, p. 1, cited by E. Garry, "Truancy: First Step to a Lifetime of Problems," *The Office of Juvenile Justice and Delinquency Prevention, Juvenile Justice Bulletin*, October, 1996.

<sup>2</sup> M. Baker, J. Sigmon, and M. Nugent, "Truancy Reduction: Keeping Students in School." *The Office of Juvenile Justice and Delinquency Prevention, Juvenile Justice Bulletin*, September, 2001.

Concord Police Department conducted monthly 4 hour truancy sweeps, averaging 41 truant students being detained during each sweep.<sup>3</sup>

The city of Roswell, New Mexico enacted a school hour curfew in 1994. Roswell police reported that school hour burglaries and other reportable crimes in neighborhoods surrounding the city's two high schools decreased. In reviewing the ordinance enforcement, the Roswell Police also found that:

- Students who commit burglaries or other crimes generally commit them during school hours and then return after school to retrieve the hidden stolen property.
- Many students detained for school hour curfew violations had been involved with criminal activities such as substance abuse, burglary, larceny, and vandalism.
- Many detained truants had records indicating an escalating pattern of delinquent behavior.
- Most detained truants were aware of and understood the consequences of breaking the law.<sup>4</sup>

In 2003, The Chief of Police for the City of Grass Valley, California, recommended the continuance of the 2001 daytime curfew ordinance. In support of his recommendation, he reported that 132 citations for curfew violations had been issued over the time span, but only 18 citations had to be issued to repeat offenders. Moreover, the number of calls for service regarding problems with juveniles in the downtown area had decreased by 72 percent, while school attendance at the high schools had increased.<sup>5</sup>

Of the half million Californians who turn twenty each year, 120,000 do not have a high school diploma. High school dropouts are three and half times more likely to be arrested than their peers with high school diplomas. Additionally, dropouts are eight times more likely to be in jail. Approximately 75 percent of state prison inmates and 69 percent of jail inmates did not complete high school.<sup>6</sup>

Research shows that a ten percent increase in graduation rates would lead to a twenty percent reduction in murder and assaults. For California this means that approximately 500 murders and 22,000 aggravated assaults would be prevented each year. More specifically, for Contra Costa County this means that approximately 19 murders and 479 aggravated assaults would be prevented each year.

---

<sup>3</sup> D. Keen, Concord City Manager, "Report to City of Concord Mayor and Council on Proposed Adoption of Daytime Curfew Ordinance." July 12, 2011.

<sup>4</sup> E. Garry, "Truancy: First Step to a Lifetime of Problems," *The Office of Juvenile Justice and Delinquency Prevention, Juvenile Justice Bulletin*, October, 1996.

<sup>5</sup> J. Foster, Grass Valley Chief of Police, "Recommendation to Grass Valley City Council Regarding Continuance of Daytime Curfew." October 17, 2003.

<sup>6</sup> Harlow, C. (2003). Education and Correctional Populations. In *Bureau of Justice Statistics Special Report*. Washington DC: U.S. Department of Justice.

By increasing the graduation rate among males by just 10 percent, murder and assault arrests would decrease about 20 percent, motor vehicle arrests would drop by 13 percent, and arson arrests would drop by 8 percent.<sup>7</sup>

In 2007, total state spending on corrections was over \$49 billion.<sup>8</sup> In terms of reduced policing, government programs to combat crime, state funded victim costs, trials, sentencing, and incarceration, the average savings per new high school graduate would be \$26,000 a year.<sup>9</sup>

### **Investing in the Future by Increasing School Attendance:**

The economic consequences of California's high dropout rate are profound. High school dropouts earn roughly \$9,000 less per year than high school graduates with no postsecondary education, and nearly \$20,000 less than residents with some college education. These dropouts tend to be unemployed, no longer in the labor force, or not actively seeking employment (i.e., "discouraged" workers) at higher rates than high school graduates. In addition, they are nearly twice as likely as high school graduates to fall below the Census Bureau's poverty threshold.<sup>10</sup> This adds up to more than \$400,000 over a 45 year career.

We estimate that a high school graduate will earn \$412,000 more in present value dollars than a dropout over a 45-year career, and contribute \$13,328 more in tax dollars. Moreover, at the beginning of the current economic depression in 2008, the unemployment rate for high school graduates was 5.2 percent, while the rate for high school dropouts was 8.5 percent. By 2010, the percentage rates had risen to 10.3 and 14.9.<sup>11</sup>

In addition, each new high school graduate yields \$209,000 in net economic benefit through increased government revenues and lowered government spending.<sup>12</sup> Finally, individuals with higher levels of education are far less likely to participate in government funded social programs like Medicaid, school lunch programs and food stamps. In 2005, 34 percent of high school dropouts lived in households that used Medicaid versus 6 percent of college graduates.<sup>13</sup>

---

<sup>7</sup> Moretti, E. (2005) *Does Education Reduce Participation in Criminal Activities?* Research presented at the 2005 Symposium on the Social Costs of Inadequate Education at Teachers College, Columbia University, New York.

<sup>8</sup> The Pew Center on the States. (2008) *One in 100: Behind Bars in America 2008*. Washington DC: The Pew Charitable Trusts.

<sup>9</sup> Levin, H., Belfield, C., Muennig, P., & Rouse, C. (2007). *The Costs and Benefits of an Excellent Education for all of America's Children*. New York: Teachers College, Columbia University.

<sup>10</sup> U.S. Bureau of the Census. (2006).

<sup>11</sup> Bureau of Labor Statistics. (2008). (2010).

<sup>12</sup> Levin, H., Belfield, C., Muennig, P., & Rouse, C. (2007).

<sup>13</sup> Baum, S., & Ma, J. (2007). *Education Pays: The benefits of Higher Education and Society*. Washington DC. The College Board.

## **Legality of School Hour Curfew:**

Under existing case law, school hour curfew ordinances are legal so long as they are not vague and do not preclude constitutionally protected rights.

In *Nunez v. City of San Diego* (1997) 114 F. 3d 935, the Ninth Circuit Court of Appeals struck down San Diego's nighttime curfew ordinances on the grounds that the wording was vague and that it also precluded expressive activity and other constitutionally protected rights. After this ruling San Diego revised the curfew ordinance in response to the *Nunez* ruling, and the revised ordinance has not been challenged in any courts to date.

More recently in *Harrahill v. City of Monrovia* (2002) 104 Cal. App 4th 761, a California Court of Appeal upheld the city of Monrovia's daytime curfew ordinance against a challenge that it was preempted by the truancy provisions of the California Education Code.

Therefore, a school hour curfew ordinance is legal so long as it is not vaguely worded, and so that it does not preclude any constitutionally protected rights.

## **Recommendation for Action:**

It is respectfully requested that Contra Costa County enact a school hour curfew ordinance.

In considering the wording for such a daytime curfew ordinance it is suggested that the county refer to the proposed ordinance that was submitted to the Mayor and City Council of Concord when a daytime curfew ordinance was being recommended for that city. When drafting this daytime curfew ordinance the city of Concord took into account the legal requirements of such a curfew, reviewing several cities' ordinances, including the ordinance upheld in Monrovia. Attached please find a copy Concord's proposed daytime curfew ordinance.

Dated: September 2, 2011

MARK A. PETERSON  
District Attorney

Attachment: Concord's Proposed School Daytime Curfew Ordinance

**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 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.

## CITY OF CONCORD ADOPTION OF A DAYTIME CURFEW ORDINANCE.

July 5, 2011

Page 2

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

**CITY OF CONCORD ADOPTION OF A DAYTIME CURFEW ORDINANCE.**

July 5, 2011

Page 3

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 *Harrhill v. City of Monrovia* (2002) 104 Cal. App 4<sup>th</sup> 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 (9<sup>th</sup> 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.

**CITY OF CONCORD ADOPTION OF A DAYTIME CURFEW ORDINANCE.**

July 5, 2011

Page 4

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**

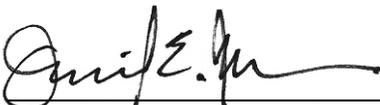
On May 26, 2011, staff publicly presented initial daytime curfew research and findings to the Neighborhood and Community Services Council Committee, which recommended forwarding the proposal to the full Council for review. The agenda has been posted as required by the Brown Act.

**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.

  
\_\_\_\_\_  
Daniel E. Keen  
City Manager  
dan.keen@ci.concord.ca.us

Prepared by: David Hughes  
Police Lieutenant, Field Operations  
[david.hughes@cpd.ci.concord.ca.us](mailto:david.hughes@cpd.ci.concord.ca.us)

Mark S. Coon  
Assistant City Attorney  
[mark.coon@ci.concord.ca.us](mailto:mark.coon@ci.concord.ca.us)

Reviewed by: Guy Swanger  
Chief of Police  
[guy.swanger@cpd.ci.concord.ca.us](mailto:guy.swanger@cpd.ci.concord.ca.us)

Craig Labadie  
City Attorney  
[craig.labadie@ci.concord.ca.us](mailto:craig.labadie@ci.concord.ca.us)

**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.

//

//

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

7 **Sec. 66-72. Definitions.**

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

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

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

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

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

18 *Guardian.*

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

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

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

25 *Minor.* Any person under 18 years of age.

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

27 *Public place.* Any place to which the public has access, including, but not limited to,  
28 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.

28 //

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.

28 //

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.

24 //  
25 //  
26 //  
27 //  
28 //

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.**

20 //  
21 //  
22 //  
23 //  
24 //  
25 //  
26 //  
27 //  
28 //

1           **Section 3.** This Ordinance No. 11-4 shall become effective thirty (30) days following its  
2 passage and adoption. In the event a summary of said Ordinance is published in lieu of the entire  
3 Ordinance, a certified copy of the full text of this Ordinance shall be posted in the office of the City  
4 Clerk at least five (5) days after its passage and adoption, including the vote of the Councilmembers,  
5 in the Contra Costa Times, a newspaper of general circulation in the City of Concord.  
6  
7

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

---

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

## **CITY COUNCIL COMMITTEE**

# **NEIGHBORHOOD AND COMMUNITY SERVICES**

**Bill Shinn, Chair**

**Tim Grayson, Committee Member**

**5:30 p.m., Thursday, May 26, 2011**

**Garden Conference Room  
1950 Parkside Drive, Concord**

### **ROLL CALL**

### **PUBLIC COMMENT PERIOD**

- 1. DISCUSSION** – Review of Student Truancy Issues, Existing Enforcement Tools, and Consideration of a Daytime Curfew Ordinance – Report by Lieutenant David Hughes and Sergeant Tiffany Leftwich-Barraco.

### **1. ADJOURNMENT**

---

Distribution: City Council  
Dan Keen, City Manager  
Valerie Barone, Assistant City Manager  
Craig Labadie, City Attorney  
Guy Swanger, Police Chief  
Lieutenant David Hughes  
Sergeant Tiffany Leftwich-Barraco  
Administrative Services  
Press

**REPORT TO COUNCIL COMMITTEE ON  
NEIGHBORHOOD & COMMUNITY SERVICES****TO HONORABLE COMMITTEEMEMBERS:**

DATE: May 26, 2011

**SUBJECT: REVIEW OF STUDENT TRUANCY ISSUE, EXISTING ENFORCEMENT TOOLS,  
AND CONSIDERATION OF A DAYTIME CURFEW ORDINANCE****Report in Brief**

On March 8, 2011, Councilmember Grayson shared his observations on the number of students that appear to be truant and loitering in the downtown area. Following comments by the rest of the Council, staff was requested to review the matter and provide information and suggestions. Chief of Police Guy Swanger, along with Lieutenant David Hughes and Sergeant Tiffany Leftwich-Barraco, researched the matter and prepared the attached report dated May 3, 2011 (Attachment 1). This report presents a summary of the findings and proposed recommendations.

**Background**

There is a strong correlation between student truancy and incidents of juvenile delinquency, a phenomenon which is well understood by educators and law enforcement personnel alike.<sup>1</sup> Truancy is a significant risk factor for substance abuse, gang activity, teen pregnancy, and dropping out of school. Truancy is often a precursor to serious violent and nonviolent criminal offenses, such as burglary, auto theft, and vandalism. The connection between truancy and delinquency also appears to be particularly acute among males.<sup>2</sup>

The City's Police Department (CPD) has recently sought to establish a stronger relationship between the Department and the Mt. Diablo Unified School District regarding the truancy issue. Statewide, compulsory education attendance laws (also known as "truancy laws") are enforced locally via the California Education Code; however, law enforcement agencies have recognized that administrative truancy enforcement alone within schools is insufficient as a standalone tactic to deter truancy and the impact it can have on local businesses, parks, and neighborhoods.

In response to the truancy problem, several local governments have opted to implement local daytime curfew ordinances which impose fines and criminal sanctions which are above and beyond the limitations of the California Education Code. Staff is recommending the Council Committee on Neighborhood and Community Services review this method as an option for the City of Concord.

<sup>1</sup> U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (2001). Truancy reduction: keeping students in school. Retrieved April 24, 2011 from <http://www.ncjrs.gov/pdffiles1/ojjdp/188947.pdf>

<sup>2</sup> Kelley, B.T., Loeber, R., Keenan, K., and DeLamarte, M. (1997). *Developmental Pathways in Boys' Disruptive and Delinquent Behavior*. Washington, DC.

**REVIEW OF TRUANCY LEVELS WITHIN THE CONCORD SCHOOL DISTRICT  
AND PROPOSED RECOMMENDATIONS**

May 26, 2011

Page 2

The City of Concord does not have a daytime curfew ordinance. A daytime curfew ordinance would prevent unsupervised and unexcused minors from frequenting public places while public schools are in session. As a consequence, police officers in Concord are limited by the California Education Code when detaining truant minors. Typically, this results in truants being detained and then returned to their school of attendance or a parent/guardian. Truants are not cited by CPD officers or otherwise referred to court for a criminal violation. The schools are solely responsible for pursuing administrative disciplinary action, if any, against a truant student.

Cooperative efforts between the Mt. Diablo Unified School District (MDUSD) public schools and the Concord Police Department have been on-going for the past 20 years using the *Stay-in-School* (SIS) program. This program is a direct result of a collaborative partnership to get truant students off the streets of Concord and back into their schools. This effort, however, currently lacks a reliable deterrence factor necessary to effectively reduce truancy, while improving public safety. Without a supplementary ordinance prohibiting unsupervised and unexcused minors from frequenting public places while public schools are in session, an Officer's legal authority is limited to the following:

Section 48264 of the CA Education Code authorizes the detention and temporary custody of truants by peace officers:

*“The attendance supervisor or his or her designee, a peace officer, a school administrator or his or her designee, or a probation officer may arrest or assume temporary custody, during school hours, of any minor subject to compulsory full-time education or to compulsory continuation education found away from his or her home and who is absent from school without valid excuse within the county, city, or city and county, or school district”.*

Section 48265 of the CA Education Code authorizes the return of the minor to school by peace officers:

*“Any person arresting or assuming temporary custody of a minor pursuant to Section 48264 shall forthwith deliver the minor either to the parent, guardian, or other person having control, or charge of the minor, or to the school from which the minor is absent....”*

For high school students, present day truancy enforcement and consequences in Concord involving the Police Department generally consist of a ride back to school in a police car, combined with whatever disciplinary consequences await them at their host school. This is likely to be insufficient to compel a minor to attend school, discourage a student from leaving a school campus without authorization, or to deter loitering in public places during school hours. From a deterrence and prevention standpoint, it is akin to transporting a suspect home who has been caught driving on a suspended license, without any criminal repercussions.

For Police Departments, truancy enforcement is costly, time-consuming, and often competes with calls for service and other higher-priority crimes.

# REVIEW OF TRUANCY LEVELS WITHIN THE CONCORD SCHOOL DISTRICT AND PROPOSED RECOMMENDATIONS

May 26, 2011

Page 3

## Discussion

In November, 1991, PD staff presented to Council the scope of the truancy issue in Concord, applicable curfew ordinances (nighttime only), and how truancy was being impacted. A comprehensive plan was described, most of which is still in effect today: School Resource Officers (SRO) primarily lead daytime SIS efforts, augmented by beat patrol officers, downtown foot beat officers, and campus supervisory staff from the high schools. Truancy focus was primarily on habitual offenders.

In October, 2000, PD and MDUSD staff jointly presented to Council a report documenting the truancy problem in Concord. Discussion consisted of the viability of a daytime curfew ordinance to augment existing truancy law in the California Education Code. In lieu of a daytime curfew ordinance, Council directed that alternative solutions be explored.

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

In April, 2007, PD and City Planning staff presented a report to Council outlining the impact of juvenile truancy on downtown Concord and city services. This presentation included the strong linkage of truant students to incidents of vandalism, thefts, and fighting. One result of this report was closed campuses with physical barriers installed to deter truancy.

As a means to decrease student truancy, the Mt. Diablo Unified School District has several different kinds of formal preventative, counseling, and prescriptive programs that attempt to reduce student truancy. These programs are in addition to on-going intervention and counseling with students from school staff, administrators, and CPD School Resource Officers. These programs are discussed in more detail in the attached report, and consist of a Student Attendance Review Team (SART), School Attendance Review Board (SARB), and Coordinated Care Team (CARE).

All principals in each of the five major high schools in Concord were contacted regarding what action(s) they take when a truant student is returned to school under the Stay in School Program. They all stated that they have different forms of progressive discipline which are determined on a case-by-case basis, based upon the attendance history of the student. They shared that there is an opportunity for an enhanced partnership with the police on the truancy issue and it is likely that more could be done to address the problem. When the principals were asked if they would support a daytime curfew ordinance preventing unsupervised and unexcused minors from frequenting public places while public schools are in session, all replied that they would support the concept of a daytime curfew ordinance. A small sample of Parent and Teacher Association (PTA) representatives from each school were also surveyed regarding the ordinance and all were in support of an ordinance.

The following municipalities in and outside of Contra Costa County have implemented daytime curfew ordinances: Benicia, El Cerrito, Fairfield, Fremont, Hayward, Hercules, Pinole, Pittsburg, Richmond and San Pablo (see the attached supporting documents for samples of daytime curfew ordinances from most of these cities).

**REVIEW OF TRUANCY LEVELS WITHIN THE CONCORD SCHOOL DISTRICT  
AND PROPOSED RECOMMENDATIONS**

May 26, 2011

Page 4

Out of the ten surveyed municipalities with ordinances, eight are fine-based: Benicia, El Cerrito, Fairfield, Fremont, Hayward, Pittsburg, Pinole, and San Pablo. The ordinances in Richmond and Hercules are not fine-based and instead offer diversionary programs.

***Ordinance Models:***

Under most daytime curfew ordinances, violators may be detained when a police officer develops reasonable suspicion that a minor (one who is subject to compulsory education) is away from his/her own home school during normal school hours, without a lawful defense. Lawful defenses include:

- Supervised by a parent/guardian
- On an emergency errand directed by a parent/guardian
- Bona fide medical appointment, student or parent/guardian
- To/from place of employment
- Authorized school-related business
- Authorized excuse/absence from the school
- Exempt by law from compulsory education (i.e.; home schooled)
- Emancipated minor

Unless one or more of the defenses are present, at the discretion of the detaining officer, the minor may be cited to appear in traffic court, in violation of the daytime curfew ordinance. In some cases, first offenses may be eligible for diversion. Subsequent citations/convictions may also result in increased fines (e.g.; \$50 for the first offense or \$100 for the second offense if it occurs within one year of the first offense).

Within the sample ordinances, the definition of “normal school hours” varies, but they are generally described as those specific to the minor’s regularly-scheduled school time on those days when school is in session. They are also explicit (i.e.; 8:30 AM to 1:30 PM), or school-dependent (i.e.; 30 minutes after school starts to 30 minutes before school ends).

Staff believes adoption of a daytime curfew ordinance for controlling truancy would be effective for the City of Concord in helping to combat student truancy. Further, based on feedback from school administrators and a sampling of parents, staff further believes that the ordinance would be supported by the Mt. Diablo Unified School District.

**Recommendation for Action**

Staff recommends the Council Subcommittee on Neighborhood and Community Services discuss this matter and provide direction to staff.

Prepared by: Guy Swanger  
Chief of Police

**REVIEW OF TRUANCY LEVELS WITHIN THE CONCORD SCHOOL DISTRICT  
AND PROPOSED RECOMMENDATIONS**

May 26, 2011

Page 5



---

Daniel E. Keen  
City Manager

Reviewed by: Valerie Barone  
Assistant City Manager

Attachment 1 – Report dated May 3, 2011 prepared by the Concord Police Department



## **Concord Police Department**

1350 Galindo Street, Concord, California 94520

**CITY COUNCIL**  
Laura M. Hoffmeister, Mayor  
Ron Leone, Vice Mayor  
Tim Grayson  
Daniel C. Helix  
William D. Shinn

Mary Rae Lehman, City Clerk  
Thomas J. Wentling, City Treasurer

Daniel E. Keen, City Manager

**DATE:** May 3, 2011

**TO:** Captain Daniel Siri

**FROM:** Lieutenant David Hughes  
Sergeant Tiffany Leftwich-Barraco

**RE:** DAYTIME CURFEW REPORT

### **Attachment 1**

### **SUMMARY**

The direct correlation between truancy and juvenile delinquency is well-established and generally understood by educators and law enforcement personnel alike.<sup>1</sup> Truancy is a significant risk factor for substance abuse, gang activity, teen pregnancy, and dropping out of school. Truancy may also be a precursor to serious violent and nonviolent criminal offenses, such as burglary, auto theft, and vandalism. In many jurisdictions, law enforcement agencies have linked high rates of truancy to juvenile daytime crime, such as burglary and vandalism. The connection between truancy and delinquency also appears to be particularly acute among males.<sup>2</sup>

It is the relationship between truancy and crime which will be the focus of this report.

### **PURPOSE**

The purpose of this report is fourfold:

- Present a historical perspective of truancy in Concord and the impact.
- Describe current efforts by the Mt. Diablo Unified School District and the Concord Police Department to reduce truancy.
- Survey high school Principals administrators and PTA members regarding the truancy problem and if a daytime curfew ordinance would be supported.
- Sample daytime curfew ordinances within other jurisdictions and offer recommendations.

---

<sup>1</sup> U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (2001). Truancy reduction: keeping students in school. Retrieved April 24, 2011 from <http://www.ncjrs.gov/pdffiles1/ojjdp/188947.pdf>

<sup>2</sup> Kelley, B.T., Loeber, R., Keenan, K., and DeLamarte, M. (1997). *Developmental Pathways in Boys' Disruptive and Delinquent Behavior*. Washington, DC.

## **BACKGROUND AND HISTORY**

Fundamentally, the intent of California's truancy law is to compel minors to attend school: to be *in and attending* school. Statewide, compulsory education attendance laws (AKA truancy laws) in California are enforced locally via the California Education Code. Recently, however, several Bay Area law enforcement agencies, as well as other agencies around the state, have recognized that administrative truancy enforcement alone is insufficient as a stand-alone tactic to deter truancy and the eventual negative impact it can have on local businesses, parks, and neighborhoods. In response to the truancy problem, several local governments have opted to implement local daytime curfew ordinances which potentially impose fines and criminal sanctions which are above and beyond the limitations of the California Education Code.

Herein lays the difference between truancy laws and daytime curfew ordinances: truancy laws are intended to keep minors in school for an educational purpose; daytime curfew ordinances are designed to keep minors out of public places, during school hours, for a public safety purpose. At first glance, the difference between the two laws may appear to be slight and a matter of semantics, however, they are not.

The larger difference between truancy laws and daytime curfew ordinances is that truancy laws alone do not expressly prohibit unsupervised minors from frequenting public places, congregating in businesses, loitering in parks, or otherwise regulate where they may be while school is in session. In contrast, daytime curfew ordinances expressly prohibit this activity during school hours and attach *criminal liability* (i.e.; fines) to daytime curfew violations.

For example, the City of Concord does not have a daytime curfew ordinance which prevents unsupervised and unexcused minors from frequenting public places while public schools are in session. Currently, Police Officers in Concord are limited by the California Education Code when detaining truant minors. Typically, this results in truants being detained and then returned to their school of attendance or a parent/guardian. Truants are not cited by CPD Officers or otherwise referred to court for a criminal violation. The schools are solely responsible for pursuing administrative disciplinary action, if any, against a truant student.

Addressing the truancy problem in Concord has historically been accomplished through cooperative efforts between the Mt. Diablo Unified School District public schools and the Concord Police Department, using the *Stay-in-School* (SIS) program. The Police Department's 20+ year SIS program is a direct result of collaborative efforts between the schools and the PD to get truant students off the streets of Concord and back into their schools. This effort, however, currently lacks a reliable deterrence factor necessary to effectively reduce truancy, while improving public safety.

The focus of this report is whether or not a daytime curfew ordinance in Concord would be viable, effective, or supported as a public safety measure.

## **Stay-in-School (SIS) -- Limitations**

As previously mentioned, for the past 20+ years the Concord Police Department has been addressing school truancy primarily through the Department's SIS program. When possible, Officers have been detaining truant students and transporting them back to their host schools. The objectives of the MDUSD in addressing truancy and CPD's SIS efforts have been mutually beneficial in this regard, since it is widely understood that a reduction in truancy carries with it a reduction in juvenile disorder and crime during school hours. Simply put, minors who are attending school lack the opportunity to be victimized or engage in criminal or disruptive behavior in public. This pro-active Police enforcement activity, however, is entirely administrative and carries with it no criminal sanctions initiated by the Police Department. Without a supplementary ordinance prohibiting unsupervised and unexcused minors from frequenting public places while public schools are in session, an Officer's legal authority is limited to the following:

Section 48264 of the CA Education Code authorizes the detention and temporary custody of truants by Peace Officers:

*"The attendance supervisor or his or her designee, a peace officer, a school administrator or his or her designee, or a probation officer may arrest or assume temporary custody, during school hours, of any minor subject to compulsory full-time education or to compulsory continuation education found away from his or her home and who is absent from school without valid excuse within the county, city, or city and county, or school district".*

Section 48265 of the CA Education Code authorizes the return of the minor to school by Peace Officers:

*"Any person arresting or assuming temporary custody of a minor pursuant to Section 48264 shall forthwith deliver the minor either to the parent, guardian, or other person having control, or charge of the minor, or to the school from which the minor is absent...."*

For high school students, present-day truancy enforcement and consequences in Concord – at least involving the Police – generally consists of a ride back to school in a Police car, combined with whatever disciplinary consequences await them at their host school. This is likely to be insufficient to compel a minor to attend school, discourage a student from leaving a school campus without authorization, or deter loitering in public places during school hours. From a deterrence and prevention standpoint, it is akin to transporting a suspect home who has been caught driving on a suspended license, without the implication criminal repercussions.

For Police Departments, truancy enforcement is costly, time-consuming, and often competes with calls for service and other higher-priority crimes.

**Truancy Impact - Concord**

Truancy is most visible when students leave school, or fail to go to school, and then gather or remain in nearby public places. Although no definitive statistics are currently available to show the correlation of truancy to daytime crime and disorder in specific geographical areas of Concord, we know from experience that it is common for truant students to congregate in the familiar retail business areas, public areas, or parks which are geographically close to our five major high schools:

| High School                | Areas Commonly Impacted  |
|----------------------------|--|
| Concord High School        | Dana Plaza (Concord Bl./Landana Dr.); Dave Brubeck Park  |
| Clayton Valley High School | Vineyards Shopping Center (Clayton Rd./Alberta Wy.); Clayton Valley Shopping Center (Clayton Rd./Ygnacio Valley Rd.) |
| Mt. Diablo High School*    | Todos Santos Park; Downtown shops; Park 'n Shop; Baldwin Park  |
| Olympic High School        | Same Areas as MDHS   |
| Ygnacio Valley High School | Ygnacio Valley Shopping Center (Treat Bl./Oak Grove Rd.)   |

\*The downtown business areas, including Todos Santos Park, are particularly popular as a destination and gathering point for truants from Mt. Diablo High School and Olympic High School.

**City Council Reports - History**

Over the past 20+ years, PD staff has reported to council the truancy problem in Concord, as well as the status and viability of a curfew ordinance:

In November, 1991, PD staff presented to council the scope of the truancy issue in Concord, applicable curfew ordinances (nighttime only), and how truancy was being impacted. A comprehensive plan was described, most of which is still in effect today: School Resource Officers (SRO) primarily lead daytime SIS efforts, augmented by beat Patrol Officers, downtown foot beat Officers, and campus supervisory staff from the high schools. Truancy focus was primarily on habitual offenders.

In October, 2000, PD and MDUSD staff jointly presented to council a report documenting the truancy problem in Concord. Discussion consisted of the viability of a daytime curfew ordinance to augment existing truancy law in the California Education Code. In lieu of a daytime curfew ordinance, Council directed that alternative solutions be explored.

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

In April, 2007, PD and City Planning staff presented a report to council outlining the impact of juvenile truancy on downtown Concord and city services. This presentation included the positive linkage of truant downtown high school students to incidents of vandalism, thefts, and fighting. Resolution from this report ultimately resulted in closed campuses with physical barriers installed to deter truancy.

### ***Stay-in-School (SIS) Sweeps***

In a PD effort to disrupt emerging truancy trends, coordinated truancy (Stay-in-School-SIS) “sweeps” have occurred around local high schools over the past few years. In January, February, and March of 2011, CPD School Resource Officers conducted dedicated truancy (SIS) sweeps on three dates for a period of about three hours each. In total, they returned approximately 90 students back to their high schools of attendance. School administrators at each of the schools were then tasked with taking appropriate disciplinary action:

| School                     | Number of Truants Returned |           |           | Total     |
|----------------------------|----------------------------|-----------|-----------|-----------|
|                            | 1/14/11                    | 2/15/11   | 3/22/11   |           |
| Concord High School        | 2                          | 0         | 2         | 4         |
| Clayton Valley High School | 0                          | 0         | 1         | 1         |
| Mt. Diablo High School*    | 12                         | 27        | 17        | 56        |
| Olympic High School*       | 6                          | 9         | 5         | 20        |
| Ygnacio Valley High School | 0                          | 0         | 6         | 6         |
| <b>Total:</b>              | <b>20</b>                  | <b>37</b> | <b>33</b> | <b>90</b> |

\*MDHS and Olympic HS students accounted for 84% of all truants contacted and returned during the three SIS sweeps.

### ***MDUSD Truancy Reduction Strategies***

According to the California Department of Education<sup>3</sup>, over the course of an academic year, the truancy rate for all California public schools in 2009-2010 was 28.15%. This is calculated by dividing statewide student enrollment by the number of students with unexcused absences or tardy on three or more days.

The 2009-2010 academic year truancy rate for all public schools within the Mt. Diablo Unified School District was nearly the same, 28.42%.

<sup>3</sup> California Dept. of Education, expulsion, suspension, and truancy information by state (2009-2010).

The 2009-2010 academic year truancy rate for all public schools within the city of Concord was 33.12%<sup>4</sup>

During the same period, the truancy rate for the five major high schools in Concord was much higher, 39.17%:

| <b>Concord - High Schools' Truancy Report – 2009-2010<sup>1</sup></b>   |                   |                            |                     |
|---|-------------------|----------------------------|---------------------|
| <b>High School</b>  | <b>Enrollment</b> | <b>Truants<sup>2</sup></b> | <b>Truancy Rate</b> |
| Concord High School   | 1591              | 337                        | 21.18%              |
| Clayton Valley High School  | 1868              | 542                        | 29.01%              |
| Mt. Diablo High School  | 1610              | 827                        | 51.37%              |
| Olympic High School   | 368               | 287                        | 77.99%              |
| Ygnacio Valley High School  | 1343              | 663                        | 49.37%              |
| <b>Total:</b>   | <b>6780</b>       | <b>2656</b>                | <b>39.17%</b>       |
| <sup>1</sup> California Dept. of Education, expulsion, suspension, and truancy information by school (2009-2010). |                   |                            |                     |
| <sup>2</sup> Number of students with unexcused absence or tardy on three or more days.                            |                   |                            |                     |

As a means to decrease student truancy, the Mt. Diablo Unified School District has several different kinds of formal preventative, counseling, and prescriptive programs that attempt to reduce student truancy. These programs are in addition to on-going intervention and counseling with students from school staff, administrators, and CPD School Resource Officers. Listed below are three truancy intervention programs administered within the MDUSD:

***Student Attendance Review Team (SART):***

SART is the first formal MDUSD process to address student attendance and truancy issues. It is a unique program which encourages the parent or guardian to get involved in their student's attendance issue, with a emphasis on prevention and intervention. By way of example, Clayton Valley High School's SART program meets once a month at Concord Police Department. Students and parents are at the meeting and they are given a package of information which provides detailed information of the student's attendance record and their grades. At that time, students and the parents are given a course of action contract and expectations, which they agree to and sign. This is an early intervention program that has prevented numerous students from being referred to SARB.

<sup>4</sup> California Dept. of Education, expulsion, suspension, and truancy information by schools with more than 100 student enrollment.

***School Attendance Review Board (SARB):***

SARB is the formal anti-truancy program adopted by the entire Mt. Diablo Unified School District. It is managed by staff members at the district office and is effectively the last diversionary resort in administratively compelling a student to attend school. This process is administered through a summons to appear in Juvenile court. Ultimately, following this process, a parent may be criminally charged and fined for willfully keeping their child from attending school.

***Coordinated Care Team (CARE):***

CARE is a group of staff members assembled at each school site within the Mt. Diablo District. They meet weekly to discuss students who are having academic issues, truancy issues, home life issues as well as any other issue that might affect their school attendance. The group receives referrals from staff members about issues that involve a student. They discuss alternative measures and come up with the best plan of action in order to assist the student. They often seek creative solutions in helping the juvenile and the family. Of those programs they often refer the family to the Parent Project, which is an educational opportunity that teaches the parent how to parent their youth. When appropriate, they also offer mediation and counseling programs. In all, they attempt to determine what the underlying issue is at the root of the attendance problem.

## **SURVEY AND OPINION**

### ***Mt. Diablo Unified School District - Response***

At each of the five major high schools in Concord, the Principals were contacted by PD Staff (SROs) regarding what action(s) they take when a truant student is returned to school under the Stay in School Program. They all stated that they have different forms of progressive discipline which are determined on a case-by-case basis, based upon the attendance history of the student. They shared that there is an opportunity for an enhanced partnership with the Police on the truancy issue and it is likely that more could be done to address the problem. When the Principals were asked if they would support a daytime curfew ordinance preventing unsupervised and unexcused minors from frequenting public places while public schools are in session, all replied that they would support the concept of a daytime curfew ordinance. A small sample of Parent and Teacher Association (PTA) representatives from each school were also surveyed regarding the ordinance. Of those that were contacted, all supported it:

| <b>High School / PTA</b>                             | <b>Support For a Daytime Curfew Ordinance</b> |
|--|---|
| Clayton Valley High School<br>Principal Gary Swanson | YES   |
| Clayton Valley High School<br>PTA Allison Bacigalupo | YES   |
| Concord High School<br>Principal Dr. McAdams         | YES   |
| Concord High School<br>PTA Diana Cochrane            | Unknown                                       |
| Mt. Diablo High School<br>Principal Kate McClatchy   | YES   |
| Mt. Diablo High School<br>PTA Raquel Echeverra.      | Unknown                                       |
| Olympic High School<br>Principal Leyla Benson        | YES   |
| Olympic High School<br>No PTA                        | N/A (No PTA)                                  |
| Ygnacio Valley High School<br>Principal Bill Morones | YES   |
| Ygnacio Valley High School<br>PTA Sherry Whitmarch   | YES   |

## **OUT SIDE AGENCY DAYTIME CURFEW ORDINANCES**

The following municipalities in and outside of Contra Costa County have implemented daytime curfew ordinances: Benicia, El Cerrito, Fairfield, Fremont, Hayward, Hercules, Pinole, Pittsburg, Richmond and San Pablo (see the attached supporting documents for samples of daytime curfew ordinances from most of these cities).

Out of the ten surveyed municipalities with ordinances, eight are fine-based: Benicia, El Cerrito, Fairfield, Fremont, Hayward, Pittsburg, Pinole, and San Pablo. The ordinances in Richmond and Hercules are not fine-based and instead offer diversionary programs:

| <b>Daytime Curfew Agency</b> | <b>Daytime Curfew Ordinance</b> |                                   |
|------------------------------|---------------------------------|-----------------------------------|
|                              | <b>Fine-Based</b>               | <b>Administrative (Diversion)</b> |
| Benicia                      | YES                             |                                   |
| El Cerrito                   | YES                             |                                   |
| Fairfield                    | YES                             |                                   |
| Fremont                      | YES                             |                                   |
| Hayward                      | YES                             |                                   |
| Hercules                     |                                 | YES                               |
| Pinole                       | YES                             |                                   |
| Pittsburg                    | YES                             |                                   |
| Richmond                     |                                 | YES                               |
| San Pablo                    | YES                             |                                   |

Police personnel at the some of the surveyed agencies were contacted and asked their opinion regarding the effectiveness of their daytime curfew ordinances. Of the agencies that responded, the ordinances were characterized as:

- “Very helpful”
- “A useful tool for Officers on the street”
- “A deterrent to daytime crime”
- “Extremely effective”
- “Curbed (daytime) burglary significantly”
- “A good tool to contact juveniles out on the street during school hours”
- “A good tool”
- “Fewer kids hanging out”

Comments included nearly unanimous observations that truant students no longer congregated in public places during school hours. Anecdotally, visible loitering during school hours appeared to have been reduced within these agencies.

### ***Ordinance Models:***

Under most daytime curfew ordinances, violators may be detained when a Police Officer develops reasonable suspicion that a minor (one who is subject to compulsory education) is away from his/her own home during normal school hours, without a lawful defense. Lawful defenses include:

- Supervised by a parent/guardian
- On an emergency errand directed by a parent/guardian
- Bona fide medical appointment, student or parent/guardian
- To/from place of employment
- Authorized school-related business
- Authorized excuse/absence from the school
- Exempt by law from compulsory education (i.e.; home schooled)
- Emancipated minor

Unless one or more of the defenses are present, at the discretion of the detaining Officer, the minor may be cited to appear in traffic court, in violation of the daytime curfew ordinance. In some cases, first offenses may be eligible for diversion. Subsequent citations/convictions may also result in increased fines (e.g.; \$50 for the first offense or \$100 for the second offense if it occurs within one year of the first offense).

Within the sample ordinances, the definition of “normal school hours” varies, but they are generally described as those specific to the minor’s regularly-scheduled school time on those days when school is in session. They are also explicit (i.e.; 8:30 AM to 1:30 PM), or school-dependent (i.e.; 30 minutes after school starts to 30 minutes before school ends).

Some ordinance models also impose similar criminal sanctions on parents/guardians, business owners, or motor vehicle drivers who knowingly permit minors to violate the ordinance.

In cases where a minor is then released on the citation, s/he may be either returned to school or picked up at the scene by a parent or guardian. If/when the minor appears in court, typically s/he is then given the choice of a fine or community service.

There is currently no statistical data related to the number of citations generated by the agencies which were sampled, since many of these ordinances are relatively new.

### ***Diversionsary Ordinance Models:***

The Richmond Police Department established their daytime curfew ordinance under a diversionary model in October of 2010. They will contact the offender under similar written municipal code; however, their first summons is assigned to their Youth Services Bureau for diversion, instead of the fine-based models used by other agencies.

In Richmond, the minor is contacted by the School Resource Officer and taken to a re-engagement center if no parent is able to pick up the juvenile during school hours. The juvenile is not returned to the school. In the City of Richmond, it is the RYSE Center or Police Activity League (PAL) programs that act as the re-engagement centers. The youth is then eventually released to the parent and given a summons to appear in Juvenile Court.

Richmond's Youth Services Bureau has a PAL Officer assigned to it as well as other detectives that only handle juvenile delinquency issues. Those select officers attempt to resolve the root issue of the juvenile's truancy problem by sending them to programs offered in the City of Richmond. This whole process is administered under the direction of a Juvenile Court Judge and with a summons to appear in court. This model is very labor intensive and requires additional resources that are not readily available in most cities. At this time it is unknown what impact it has had on the truancy problem within the City of Richmond.

### ***Anticipated Economic and Fiscal Impact:***

Implementing and maintaining a daytime curfew ordinance would likely be cost-neutral. Start up costs would consist of staff time to draft and prepare the ordinance for council. Many tested, sample ordinances already exist in a variety of forms throughout the Bay Area and California. A legally defensible ordinance would require final review and approval from the City Attorney's office, however, the constitutionality of a daytime curfew ordinance in California has already been well established (most conforming with *Nunez v. City of San Diego*, 114 F.3d 935, 9th Cir. 1997). A large number of major cities (i.e.; Los Angeles, San Diego) in California have successfully instituted daytime curfew ordinances which have prevailed when legally challenged.

The economic impact of a daytime curfew ordinance is unknown, but likely to be minimal. Truant students may frequent and patronize local businesses during school hours, but they may also discourage other residents from patronizing businesses as well. Like any other public safety municipal code, enforcement by way of citation to traffic court would result in a fine being levied, with some revenue being created. A first offense fine would likely be in the \$50 to \$100 range.

State truancy laws will continue to overlap with any proposed curfew ordinance, regardless of whether or not criminal sanctions (fines) attach. In short, Officers will still contact truants, detain them, and return them to their schools. The act of issuing a citation for a CMC curfew ordinance violation, in tandem with truancy enforcement, will

not substantively require additional resources or cost. Since all citations will be issued by Officers during hours that both public schools and traffic court are in session (i.e.; 8:00 AM-2:00 PM), it is highly likely that the citing Officers' court appearances would be on a straight-time, regular (day) shift basis, and not require overtime appearances.

Based upon all these factors, it is unlikely that a daytime curfew ordinance would have any negative fiscal impact to the city.

## **CONCLUSION AND RECOMMENDATIONS**

School age-minors, with certain exceptions, are required by California law to be in school. Voluntary compliance with compulsory education requirements – both from students and parents – necessarily brings with it the benefit of increased public and community safety during school hours. Simply put, when minors are in school being supervised by adults, they are less likely to cause harm or be harmed by others. A reduction in youth-related daytime crime and disorder, especially in public areas, businesses, or neighborhoods adjacent to schools, is directly related to vigorous enforcement of truancy laws.

However, existing truancy rates within Concord high schools – especially those near to the downtown area -- strongly suggests the consequences of violating truancy laws are insufficient to compel minors to attend or remain in school. Thus it is primarily the public safety need for the daytime safety of minors which has produced daytime curfew ordinances in Bay Area cities and around the state.

A daytime curfew ordinance in Concord would provide Officers with an additional option for dealing with truant minors who are out on the streets during school hours. Instead of just school-based administrative consequences or discipline, real criminal sanctions (i.e.; fines) would attach. This would likely enhance our collective ability to deter truancy, reduce the potential for truancy-associated crime and disorder in our communities, and increase the safety of minors in Concord during school hours.

After a review of the Mt. Diablo Unified School District Response to truancy, the current truancy problem in Concord today, and the preliminary, surveyed opinion of some of the stakeholders (Principals and PTA members), it is our recommendation that the City of Concord consider implementing a daytime curfew ordinance in Concord. Such an ordinance would jointly serve as a benefit to schools, students, law enforcement, and the public. In the interim, broader opinion can be solicited from youth, parent, business, and school representatives.

The Mt. Diablo Unified School District continues to be our partner in this issue and we will maintain our collaborative efforts to prevent truancy.

Respectfully Submitted,

Lieutenant David Hughes  
Sergeant Tiffany Leftwich-Barraco

# **SAMPLE DAYTIME CURFEW ORDINANCES**

Benicia  
El Cerrito  
Fairfield  
Fremont  
Hayward  
Hercules  
Pinole  
Pittsburg  
Richmond  
San Pablo

**BENICIA**  
**DAYTIME CURFEW ORDINANCE**

Article II. Daytime Curfew

**9.28.070 Purpose and intent.**

State law requires all persons between the ages of six 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. Regular school attendance promotes employability upon graduation and reduces delinquency as well as the potential for future dependence upon public assistance.

The community as a whole suffers when a minor student is not attending school. Truancy or unexcused absenteeism from school results in a loss of educational opportunities to the student and a loss of revenue to the 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 behaviors of truants when they should be in school. This is not intended to abridge or interfere with the lawful rights of parents or legal guardians or to contravene or supersede the laws of the state of California dealing with such matters.

This article is intended to assist with the policing of public places in the city during specified daytime hours and the prevention of crimes by and against minors during those hours. It is not intended to interfere with the enforcement of state laws regulating truancy or with the school district's truancy programs. This article is intended to provide the city with an additional proactive intervention tool to protect youth. (Ord. 08-17 § 1).

**9.28.080 Definitions.**

For the purpose of this article, the following terms shall be defined as follows:

- A. "Curfew hours" shall mean the period of the minor's regular scheduled school time on school days.
- B. "Emergency" shall mean any unforeseen combination of circumstances or a situation that calls for immediate action. The term includes, but is not limited to, a fire, natural disaster, an automobile accident, explosion, or any condition requiring immediate action to prevent serious bodily injury or loss of life.
- C. "Establishment" shall mean any privately owned place of business operated for profit to which the public is invited including, but not limited to, any place of amusement or entertainment.

D. "Guardian" shall mean:

1. A person who, under court order, is the guardian of a minor; or
2. A public or private agency with whom a minor has been placed by a court.

E. "Loiter" shall mean to delay an activity, errand, or journey with aimless idle stops and purposeless distractions, to remain in a place in an idle manner, to hang around aimlessly or without real necessity.

F. "Minor" shall mean any person under 18 years of age.

G. "Operator" shall mean any individual, firm, association, partnership or corporation operating, managing or conducting any establishment.

H. "Parent" shall mean a person who is a natural parent, adoptive parent or step-parent of a minor.

I. "Public place" shall mean any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities and shops.

J. "Remain" shall mean:

1. To stay behind while others withdraw, to tarry, to stay; or
2. To fail to leave the premises when requested to do so by a peace officer, the owner, operator or other person in control of the premises.

K. "Responsible adult" shall mean a person at least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.

L. "Serious bodily injury" shall mean bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ. (Ord. 08-17 § 1).

#### **9.28.090 Offenses.**

It is unlawful for any minor subject to compulsory full-time education or to compulsory continuation education to be found away from his or her home during the minor's regular scheduled school time when absent from school within the city without lawful defense as defined herein in BMC 9.28.100. (Ord. 08-17 § 1).

### **9.28.100 Lawful defenses for absence from school.**

- A. When the minor is accompanied by his or her parent, guardian, or other adult person having care or custody of the minor.
- B. When the minor is on an emergency errand directed by his or her parent or guardian, or other adult person having care or custody of the minor.
- C. When the minor is going or coming directly to or from his or her place of gainful employment or to or from a medical, dental or other health care appointment.
- D. When the minor has permission to leave for lunch or school-related activity.
- E. When the minor is going or coming directly to or from a school-approved or school-related business, trade, profession, occupation or program in which the minor is lawfully engaged, such as a work study or work experience program, subject to verification by a proper school authority.
- F. When the minor is exempt by law from compulsory education or compulsory continued education.
- G. When the minor is authorized to be absent from his or her school under the provisions of California Education Code Section 48205, or any applicable state or federal law.
- H. When the minor is going directly to or from an event or activity that is directly related to any medical condition of a parent or other adult person having the care and custody of the minor. (Ord. 08-17 § 1).

### **9.28.110 Enforcement – Penalties.**

Before taking any enforcement action under this section, a police officer shall ask the apparent offender's age and reason for being in a public place or on the premises of an establishment during curfew hours. The officer shall not issue a citation or detain a minor under this article unless the officer reasonably believes that an offense has occurred and, based upon the minor's response(s) and other circumstances, no defense under BMC 9.28.100 appears present or applicable. (Ord. 08-17 § 1).

### **9.28.120 Penalties.**

Any person who violates a provision of this article is guilty of a separate offense for each day or part of a day during which the violation is committed or continued. Any person who violates the offenses described in this article shall be guilty of an infraction. The fine for this violation shall be \$50.00 for the first offense, \$100.00 for the second offense within one calendar year of the first offense, and \$200.00 for the third and

consecutive offense(s) within one year from the second offense. In lieu of paying the fine, first-time offenders who are eligible for the city's diversion program may provide community service through the diversion program. (Ord. 08-17 § 1).

**EL CERRITO  
DAYTIME CURFEW ORDINANCE**

10.70.010 - Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

A. "Emergency" shall mean an unforeseen combination of circumstances or the resulting state that justifies immediate action. Emergency includes, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation justifying immediate action to prevent serious bodily injury, loss of life or damage to property.

B. "Guardian" shall mean:

1. A person who, under court order, is the guardian of the person of a minor and may, under appropriate circumstances, include a person who, under court order, is the guardian of the estate of a minor; or

2. A public or private agency with whom a youth has been placed by order of a court of competent jurisdiction; or

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

C. "Juvenile" shall mean any person less than eighteen years of age. "Juvenile" is synonymous with "youth" and "minor."

D. "Loiter" shall mean to delay, to linger or to idle about.

E. "Minor" shall mean any person less than eighteen years of age. "Minor" is synonymous with "youth" and "juvenile."

F. "Official warning" means documentation that the minor and/or parent or guardian, has been contacted, detained and/or counseled.

G. "Parent" shall mean a person who is a natural parent, adoptive parent, or step-parent of a minor.

H. "Public place" shall mean any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, sidewalks, highways, parking lots, private residences left open to the public without the presence of a parent or guardian as a supervisor and the common areas of schools, hospitals, apartment houses, multiple family dwellings, office buildings, transport facilities, shopping centers, commercial establishments, retail establishments, and shops.

I."Remain" shall mean to loiter, linger or stay, whether on foot or in a vehicle, or fail to leave a public place when requested to do so by a police officer or the owner, operator or person in control of the public place.

J."Youth" shall mean any person less than eighteen years of age and is synonymous with the term "minor" and "juvenile."

K."Curfew hours" shall be from 8:00 a.m. until 2:00 p.m. and 10:00 p.m. until 5:00 a.m., except Friday and Saturday nights, when they shall be from 11:00 p.m. until 5:00 a.m. (Ord. No. 2010-02, § II, 2-1-2010)

10.70.020 - Purpose and intent—Daytime curfew.

A.State law requires all persons between the ages of six and eighteen 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. Regular school attendance promotes employability upon graduation and reduces delinquency as well as the potential for future dependence upon public assistance.

B.The community as a whole suffers when a minor student is not attending school. Truancy or unexcused absenteeism from school results in a loss of educational opportunities to the student and a loss of revenue to the 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 behaviors of truants when they should be in school.

C.It is the intent of the City Council of the City of El Cerrito, by this Chapter and in cooperation and coordination with the West Contra Costa County Unified School District by the exercise of the city's traditional police powers and its curfew powers over minors, to establish and enforce a curfew upon minors of school age on school days during the hours between 8:00 a.m. and 2:00 p.m., with stated exceptions, in order to provide protection for the community and public property from deleterious effects of truancy. This is not intended to abridge or interfere with the lawful rights of parents or legal guardians or to contravene or supersede the laws of the State of California dealing with such matters.

(Ord. No. 2010-02, § II, 2-1-2010)

10.70.030 - Authority.

The authority of the ordinance codified in this chapter is based upon (a) the police power granted to the city by the Constitution of the State of California, Article XI, Section 7 and (b) independent and separate from the provisions of California Welfare and Institutions Code, Sections 625, 626 and 626.5.

(Ord. No. 2010-02, § II, 2-1-2010)

10.70.040 - Prohibited activity—Daytime curfew.

It shall be unlawful for any minor subject to compulsory full-time education or to compulsory continuation education to be found away from his or her home between the hours of 8:00 a.m. and 2:00 p.m. when absent from school within the city without lawful excuse as defined in Section 10.70.050.

(Ord. No. 2010-02, § II, 2-1-2010)

10.70.050 - Lawful excuses for absence from school.

It shall be permissible for a minor subject to compulsory full-time education or to compulsory continuing education to be found away from his or her home between the hours of 8:00 a.m. and 2:00 p.m. under the following circumstances:

A. When the minor is accompanied by his or her parent, guardian or other adult person having care or custody of the minor.

B. When the minor is on an emergency errand directed by his or her parent, guardian, or other adult person having care or custody of the minor.

C. When the minor is going or coming directly to or from his or her place of gainful employment or to or from a medical appointment.

D. When the minor has permission to leave for lunch or school-related activity and has in his or her possession a valid, school issued, off-campus permit.

E. When the minor is going or coming directly to or from a school approved or school related business, trade, profession, occupation or program in which the minor is lawfully engaged, such as work study or work experience program, subject to verification by a proper school authority.

F. When the minor is exempt by law from compulsory education or compulsory continued education.

G. When the minor is authorized to be absent from his or her school under the provisions of California Education Code section 48205, or any applicable state or federal law.

H. When the minor is going directly to or from an event or activity that is directly related to any medical condition of a parent or other adult person having the care and custody of the minor.

(Ord. No. 2010-02, § II, 2-1-2010)

10.70.060 - Enforcement penalties—Daytime curfew.

A.A violation of any section in this article is an infraction and not a misdemeanor.

B.The fine for this violation shall be listed in the City of El Cerrito Master Fee Schedule as adopted from time to time by resolution.

C.A peace officer or probation officer may assume temporary custody, during school hours, of any minor subject to compulsory full-time education or to compulsory continuation education found away from his or her home and who is absent from school without a valid excuse and return such minor to his or her school of registration.

D.This section shall not be construed to limit the authority of the court to render any disposition authorized by California Welfare & Institutions Code Section 258, subdivision (a) or any other provision of the Juvenile Court Law for violation of this article.

(Ord. No. 2010-02, § II, 2-1-2010)

# FAIRFIELD PD DAYTIME CURFEW

## CHAPTER 12 OFFENSES - MISCELLANEOUS

### Article I. In General.

#### 12.1.1 Purpose and Intent.

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 lack of maturity and experience and their limited ability to make critical decisions in an informed and mature manner. Enactment and enforcement of a juvenile crime and victimization.

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.

Both the nighttime and daytime juvenile curfews promote legitimate and compelling governmental interests while not restricting constitutionally protected activities.

#### 12.1.2 Definitions.

In these sections 12.1.1 through 12.1.7:

Custodial Person means any parent or legal guardian of the minor, or any person eighteen (18) years of age or older who possesses written authorization by such parent or legal guardian for the care and custody of the minor.

Daytime Curfew Hours means the period from 8:30 a.m. through 1:30 p.m. on those days when the minor's school is in session with the exception of a school approved lunch hour.

Emergency 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.

Minor means a person under the age of eighteen (18) years.

Nighttime Curfew Hours means the period from 11:00 p.m. through 5:00 a.m. every day of the week.

Public Place means any place to which the public has access and includes, but is not limited to, streets, roads, alleys, trails, parks, recreation areas, public grounds or buildings, vacant lots or buildings, common areas of schools (except during regular school hours), office buildings, transport facilities, restaurants, retail establishments, places of amusement, parking lots, or other unsupervised places.

### **12.1.3 Prohibitions.**

Except as provided in section 12.1.4 (Exceptions) below:

- (a) Nighttime curfew: Every minor who is present in or upon any public place during nighttime curfew hours is guilty of an infraction.
- (b) Daytime curfew: Every minor subject to compulsory education or to compulsory continuation education who is not in possession of a valid, school-issued, off-campus permit giving permission to leave campus or not receiving instruction by a qualified tutor pursuant to Education Code Section 48224 or not otherwise exempt from attendance at a public or private full-time day school as set forth in the Education Code, who is present in or upon any public place during the daytime curfew hours is guilty of an infraction.
- (c) Custodial responsibility: Every custodial person who allows or permits a minor in his or her custody to violate any provision of this section is guilty of an infraction.

### **12.1.4 Exceptions.**

The prohibitions of Section 12.1.3 do not apply if the minor is:

1. Accompanied by a custodial person;
2. On an errand directed by, and in possession of a written excuse from, a custodial person;
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 minor;

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 lawful activity with written permission from a custodial person;
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.

#### **12.1.5 Enforcement.**

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 Section 12.1.4 apply.

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.

#### **12.1.6 Penalty.**

Each violation of Section 12.1.3 is a separate offense.

#### **12.1.7 Severability.**

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. (Ord. No. 98-18, § 1.)

**FREMONT  
DAYTIME CURFEW ORDINANCE**

**ARTICLE 2. DAY TIME YOUTH PROTECTION**

§ 3-16200. Prohibited activity.

§ 3-16210. Enforcement; penalties.

**Sec. 3-16200. Prohibited activity.**

(a) It is unlawful for any minor under the age of eighteen years, who is subject to compulsory education or to compulsory continuation education to be in or upon any public street, highway, road, alley, park, playground, or other public ground, public place, public building, place of amusement, eating establishment or vacant lot when the minor is required to be in school. This section shall only apply during the hours of 7:30 a.m. to 2:30 p.m. on days when the minor's school is in session.

(b) This section does not apply:

(1) When the minor is accompanied by his or her parent, guardian, or other adult person having the care or custody of the minor; or

(2) When the minor is on an emergency errand directed by his or her parent or guardian or other adult person having care or custody of the minor; or

(3) When the minor is going or coming directly to or from his or her place of gainful employment or to or from a medical appointment; or

(4) When the minor has permission to leave school campus for lunch or school-related activity and has in his or her possession a valid, school-issued, off-campus permit; or

(5) When the minor is exempt by law from compulsory education or compulsory continuation education; or

(6) When the minor is authorized to be absent from his or her school under the provisions of California Education Code section 48205, or any other applicable state or federal law; or

(7) When the minor is going directly to or from an event or activity that is directly related to any medical condition of a parent or other adult person having the care and custody of the minor.

(Ord. No. 12-2006, § 8, 6-27-06.)

**Sec. 3-16210. Enforcement; penalties.**

(a) Notwithstanding section 1-3100, a violation of this Article is an infraction and not misdemeanor.

(b) The fine for violation of this article shall be seventy-five dollars for the first offense, one hundred fifty dollars for the second offense within one calendar year of the first offense, and two hundred fifty dollars for the third offense within one year of the second offense.

(c) This section shall not be construed to limit the authority of the court to render any disposition authorized by Welfare and Institutions Code section 258, subdivision (a) or any other provision of the Juvenile Court Law for violation of this article.

(Ord. No. 12-2006, § 9, 6-27-06.)

**HAYWARD  
DAYTIME CURFEW ORDINANCE**

**ARTICLE 9**

**CURFEW HOURS FOR MINORS**

("Youth Protection Ordinance")

**SEC. 4-9.00 TITLE.** This Article shall be known as the "Curfew Hours for Minors Ordinance."

**SEC. 4-9.01 PURPOSE AND INTENT.** The purpose of this Article is to protect youth from unlawful and corrupting influences; to reduce juvenile crime, especially violent crime committed by and perpetrated against juveniles; and to promote the public health, safety, and general welfare during late night and school hours. Although the City Council desires to reduce the incidents of juvenile crime and victimization, the City Council does not intend to prohibit, prevent, or interfere with a youth's exercise of First Amendment or other rights under the United States Constitution. This Article's provisions preserve those constitutionally protected rights. In enacting this Article, the City Council is updating the City's existing curfew ordinance for minors to ensure the ordinance conforms to *Nunez v. City of San Diego*, 114 F.3d 935 (9th Cir. 1997), which requires sufficient specificity in the ordinance language. The City Council hereby finds and declares that:

- (a) The City's nighttime and daytime curfews for minors are a significant factor in the City of Hayward's efforts to minimize juvenile violence, criminal street-gang activity, and crime by and against juveniles in the city;
- (b) Because of their lack of maturity and experience, persons under the age of eighteen years are particularly susceptible to the lure of unlawful and gang-related activities and to becoming the victims of crime;
- (c) Appropriate nighttime and daytime curfews will assist the City Council in its objective of protecting the welfare of minors by:
  - (1) reducing the likelihood that minors will become the victims of criminal acts,
  - (2) reducing the likelihood that minors will participate in criminal acts, unlawful gang-related activity, drug use, or narcotics trafficking, and
  - (3) assisting parents and guardians in carrying out their parental responsibility to exercise reasonable supervision and control over minors entrusted to their care; (d) Daytime and nighttime curfews for minors will be in the interest of the public health, safety, and general welfare.

## SEC. 4-9.02 DEFINITIONS.

For the purpose of this Article, certain words and phrases are defined, and certain provisions shall be construed as herein set out, unless it shall be apparent from their context that a different meaning is intended:

(a) 'Nighttime Curfew hours' means: (1) 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. of the following day (Friday); (2) 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday.

(b) 'Daytime Curfew Hours' means: For any minor who is subject to compulsory education or to compulsory continuing education, the actual hours when said minor's school is in session.

(c) '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, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

(d) 'Minor' means any person less than 18 years of age, unless the person is:

(1) on active duty with the armed forces of the United States,

(2) validly married, whether or not the marriage has been dissolved, or

(3) otherwise emancipated under California Family Code sections 7000 et seq. or another state's laws. For the purposes of this Article, the term is synonymous with the terms "youth" and "juvenile."

(e) 'Adult' means any person 18 years of age or older.

(f) 'Parent' means a person who is a natural parent, adoptive parent, or step-parent of another person.

(g) 'Guardian' means:

(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 eighteen (18) years of age and is authorized by the minor's parent or guardian to have the care and custody of that minor.

(h) '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, roads, alleys, sidewalks,

highways, and the common areas of schools, hospitals, apartment houses, office buildings, public buildings, transport facilities, shops, parks, playgrounds, malls, places of amusement, eating establishments, shopping centers and parking lots.

(i) 'Remain' means to:

(1) linger or stay, whether on foot or in a vehicle; or

(2) fail to leave premises when requested to do so by a police officer or the owner, operator, or person in control of the premises.

#### SEC. 4-9.05 DAYTIME CURFEW OFFENSE.

(a) It is unlawful for any minor, who is subject to compulsory education or to compulsory continuation education to loiter, idle, wander, or be in a public place when said minor's assigned school is actually in session. This section shall also apply to a minor whose enrollment status is under suspension, expulsion, or transfer in progress.

(b) A parent or guardian of a minor commits an offense if he or she knowingly permits, or by insufficient control allows, a minor who is subject to compulsory education or to compulsory continuation education to violate 4-9.05(a). No parent or guardian shall refuse to take custody of a minor who has been detained, arrested or issued a citation for violation of this Article.

#### SEC. 4-9.06 LIMITATIONS TO DAYTIME CURFEW OFFENSE.

The offenses listed in section 4-9.05 shall not apply when the minor is:

(a) Accompanied by the minor's parent, guardian, or other adult having care or custody of the minor; or

(b) On an errand directed by his or her parent, guardian, or other adult having care or custody of the minor, without any unnecessary detour or stop; or

(c) In said place or places in connection with, or as a requirement of, a business, trade, profession or occupation in which the minor is lawfully engaged, or going to or returning home from without any unnecessary detour or stop; or

(d) Involved in an emergency, receiving medical treatment or care, or going to or coming from a medical appointment, without any unnecessary detour or stop; or

(e) Off of the school campus for lunch or school-related activity, and has in his or her possession a valid, school issued, off-campus permit, or is otherwise authorized to be absent from his or her school pursuant to the provisions of California Education Code § 48205, or any other applicable state or federal law; or

(f) Exempt by law from compulsory education or compulsory continuing education as provided by the California Education Code, or is going directly to, or coming directly from, a compulsory alternative education program activity; or

#### SEC. 4-9.07 ENFORCEMENT.

(a) Before taking any enforcement action under this Article, a police officer shall ask the apparent offender's name, address, age, and reason for being in the public place, and any other information reasonably necessary to determine whether a violation exists. The officer shall not issue a citation or make an arrest under this Article unless the officer reasonably believes that an offense has occurred, as set forth above.

(b) There is no requirement of a first warning in order for the officer to issue an Administrative Citation under this Article.

#### SEC. 4-9.08 PENALTIES.

A person who violates a provision of this Article is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. In addition to all other remedies or penalties provided by law, a violation of any of the sections contained in this Article is punishable by administrative penalties as set forth in Chapter 1, Article 7 of the Hayward Municipal Code.

#### SEC. 4-9.09 HEARINGS ON THE IMPOSITION OF ADMINISTRATIVE PENALTIES – APPEALS.

Any person subject to administrative penalties pursuant to this Article shall have the right to request an administrative hearing in accordance with Hayward Municipal Code 1-7.07 through 1-7.10, inclusive. The administrative penalties imposed by this Article do not preclude other potential civil actions or criminal prosecution under any other provision of law, including but not limited to Education Code § 48264.

## **HERCULES DAYTIME CURFEW ORDINANCE**

### **Article 1: Daytime Curfew**

#### **Sec. 4-4.101 Purpose and Intent—Daytime Curfew.**

(a) State law requires all persons between the ages of six (6) and eighteen (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. Regular school attendance promotes employability upon graduation and reduces delinquency as well as the potential for future dependence upon public assistance.

(b) The community as a whole suffers when a minor student is not attending school. Truancy or unexcused absenteeism from school results in a loss of educational opportunities to the student and a loss of revenue to the 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 behaviors of truants when they should be in school.

(c) It is the intent of the City Council of the City of Hercules, by this Chapter and in cooperation and coordination with the West Contra Costa County Unified School District and the John Swett Unified School District, by the exercise of the City's traditional police powers and its curfew powers over minors, to establish and enforce a curfew upon minors of school age on school days during the hours between 8:00 a.m. and 2:00 p.m., with stated exceptions, in order to provide protection for the community and public property from deleterious effects of truancy. This is not intended to abridge or interfere with the lawful rights of parents or other legal guardians or to contravene or supersede the laws of the State of California dealing with such matters.

(d) This Chapter may be cited as the "Hercules Youth Protection Ordinance." (Ord. 439 § 1 (part), 2008)

#### **Sec. 4-4.102 Authority.**

The authority of this Chapter is based upon (a) the police power granted to the City by the Constitution of the State of California, Article XI, Section 7, and (b) independent and separate therefrom, the provisions of California Welfare and Institutions Code Sections 625, 626 and 626.5. (Ord. 439 § 1 (part), 2008)

#### **Sec. 4-4.103 Definitions.**

For the purposes of this Article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

(a) "Emergency" shall mean an unforeseen combination of circumstances or the resulting state that justifies immediate action. Emergency includes, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation justifying immediate action to prevent serious bodily injury, loss of life or damage to property.

(b) "Guardian" shall mean:

(1) A person who, under court order, is the guardian of the person of a minor and may, under appropriate circumstances, include a person who, under court order, is the guardian of the estate of a minor; or

(2) A public or private agency with whom a youth has been placed by order of a court of competent jurisdiction; or

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

(c) "Juvenile" shall mean any person less than eighteen (18) years of age. "Juvenile" is synonymous with "youth" and "minor."

(d) "Loiter" shall mean to delay, to linger or to idle about.

(e) "Minor" shall mean any person less than eighteen (18) years of age. "Minor" is synonymous with "youth" and "juvenile."

(f) "Official warning" means documentation that the minor and/or parent or guardian has been contacted, detained and/or counseled.

(g) "Parent" shall mean a person who is a natural parent, adoptive parent, or step-parent of a minor.

(h) "Public place" shall mean any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, sidewalks, highways, parking lots, private residences left open to the public without the presence of a parent or guardian as a supervisor and the common areas of schools, hospitals, apartment houses, multiple-family dwellings, office buildings, transport facilities, shopping centers, commercial establishments, retail establishments, and shops.

(i) "Remain" shall mean to loiter, linger or stay, whether on foot or in a vehicle, or fail to leave a public place when requested to do so by a police officer or the owner, operator or person in control of the public place.

(j) "Youth" shall mean any person less than eighteen (18) years of age and is synonymous with the term "minor" and "juvenile."

(k) "Youth protection ordinance hours" shall be from 8:00 a.m. until 2:00 p.m. and 10:00 p.m. until 5:00 a.m. of the following day. (Ord. 439 § 1 (part), 2008)

**Sec. 4-4.104 Prohibited Activity—Daytime Curfew.**

It shall be unlawful for any minor subject to compulsory full-time education or to compulsory continuation education to be found away from his or her home between the hours of 8:00 a.m. and 2:00 p.m. when absent from school within the City without lawful excuse as defined in Section 4-4.105. (Ord. 439 § 1 (part), 2008)

**Sec. 4-4.105 Lawful Excuses for Absence from School.**

It shall be permissible for a minor subject to compulsory full-time education or to compulsory continuing education to be found away from his or her home between the hours of 8:00 a.m. and 2:00 p.m. under the following circumstances:

(a) When the minor is accompanied by his or her parent, guardian or other adult person having care or custody of the minor.

(b) When the minor is on an emergency errand directed by his or her parent, guardian, or other adult person having care or custody of the minor.

(c) When the minor is going or coming directly to or from his or her place of gainful employment or to or from a medical appointment.

(d) When the minor has permission to leave for lunch or school-related activity and has in his or her possession a valid, school-issued, off-campus permit.

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

(f) When the minor is exempt by law from compulsory education or compulsory continued education.

(g) When the minor is authorized to be absent from his or her school under the provisions of California Education Code Section 48205, or any applicable state or federal law.

(h) When the minor is going directly to or from an event or activity that is directly related to any medical condition of a parent or other adult person having the care and custody of the minor. (Ord. 439 § 1 (part), 2008)

**Sec. 4-4.106 Enforcement; Penalties—Daytime Curfew.**

(a) A violation of any section in this Article is an infraction and not a misdemeanor.

(b) The fine for this violation shall be fifty dollars (\$50.00) upon a conviction for the first offense, one hundred dollars (\$100.00) upon conviction for the second offense within one (1) calendar year of the first offense, and two hundred dollars (\$200.00) upon a conviction for the third offense within one (1) year from the second offense.

(c) A peace officer or probation officer may assume temporary custody, during school hours, of any minor subject to compulsory full-time education or to compulsory continuation education found away from his or her home and who is absent from school without a valid excuse and return such minor to their school of registration.

(d) This Section shall not be construed to limit the authority of the court to render any disposition authorized by Welfare and Institutions Code Section 258, subdivision (a) or any other provision of the Juvenile Court Law for violation of this Article. (Ord. 439 § 1 (part), 2008)

**PINOLE  
DAYTIME CURFEW ORDINANCE**

**9.16.020 DAYTIME CURFEW.**

It shall be unlawful for any minor subject to compulsory full-time education or to compulsory continuation education to be in or upon any public street, highway, road, alley, park, playground, or other public ground, public place, public building, place of amusement, eating establishment, or vacant lot between the hours of eight a.m. (8:00 a.m.) and two p.m. (2:00 p.m.) when absent from school within the city without lawful excuse as defined in Section C. below.

A. Authority. The authority of this Chapter is based upon the police power granted to the city by the Constitution of the State of California, Article XI, Section 7.

B. Definitions. For the purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them by this section:

1. "Emergency" shall mean an unforeseen combination of circumstances or the resulting state that justifies immediate action. Emergency includes, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation justifying immediate action to prevent serious bodily injury, loss of life or damage to property.

2. "Guardian" shall mean:

a. A person who, under court order, is the guardian of the person of a minor and may, under appropriate circumstances, include a person who, under court order, is the guardian of the estate of a minor; or

b. A public or private agency with whom a minor has been placed by order of a court of competent jurisdiction; or

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

3. "Minor" shall mean any person less than eighteen (18) years of age.

4. "Parent" shall mean a person who is a natural, adoptive, legal, or step- parent of a minor.

C. Exemptions. This section shall not apply to the following circumstances:

1. When the minor is accompanied by his or her parent, guardian or other adult person having care or custody of the minor.

2. When the minor is on an emergency errand directed by his or her parent, guardian, or other adult person having care or custody of the minor.
3. When the minor is going or coming directly to or from his or her place of gainful employment or to or from a medical appointment.
4. When the minor has permission to leave for lunch or school-related activity and has in his or her possession a valid, school-issued, off-campus permit.
5. When the minor is going or coming directly to or from a school-approved or school-related business, trade, profession, occupation or program in which the minor is lawfully engaged, such as a work study or work experience program, subject to verification by a proper school authority.
6. When the minor is exempt by law from compulsory education or compulsory continued education.
7. When the minor is authorized to be absent from his or her school under the provisions of California Education Code Section 48205, or any applicable state or federal law.
8. When the minor is going directly to or from an event or activity that is directly related to any medical condition of a parent or other adult person having the care and custody of the minor.

#### D. Enforcement - Penalties.

1. A violation of any section in this section is an infraction and not a misdemeanor.
2. The fine for this violation shall be fifty dollars (\$50.00) upon a conviction for the first offense, one hundred dollars (\$100.00) upon conviction for the second offense within one (1) calendar year of the first offense, and two hundred dollars (\$200.00) upon a conviction for the third offense within one (1) year from the second offense. (Ord. 2009-07 § 2, 2009)

**PITTSBURG  
DAYTIME CURFEW ORDINANCE**

**9.84.015 Daytime curfew.**

A. Curfew. It is unlawful for any minor who is subject to compulsory education or to compulsory continuation education, to be present in or upon any public street, avenue, highway, road, curb area, alley, park, playground or other public ground, public place or public building, place of amusement or eating place, vacant lot, or abandoned or vacant building between the hours of 8:30 a.m. and 1:30 p.m. on days when the minor's school is in session.

B. Exceptions. This section does not apply when:

1. The minor is accompanied by his or her parent, guardian or other adult person having the lawful care or custody of the minor, or by his or her spouse 18 years of age or older; or
2. The minor is on an errand directed by his or her parent, guardian or other adult person having the lawful care or custody of the minor, or by his or her spouse 18 years of age or older; or
3. The minor has in his or her possession a written excuse from his or her parent, legal guardian or other adult person having the legal care or custody of the minor, or from his or her spouse 18 years of age or older; or
4. The minor has permission to leave campus and has in his or her possession a valid, school-issued, off-campus permit; or
5. The minor is going directly to or returning from a public meeting, or place of public entertainment, such as a movie, play, sporting event, dance or school activity, provided such meeting, event or activity is a school-approved activity for the minor or is otherwise supervised by school personnel of the minor's school; or
6. The minor is going directly to or coming directly from a medical appointment or is going or coming directly to or from his or her place of gainful employment or the presence of such minor in such place or places is connected with or required with respect to a business, trade, profession or occupation in which such minor is lawfully engaged; or
7. The minor is receiving instruction by a qualified tutor pursuant to Education Code Section 48224, or is otherwise exempt from attendance at a public or full-time day school as set forth in the Education Code; or

8. The minor is married or has been emancipated in accordance with California Family Code Section 7000 et seq.; or

9. The minor is attending an off-campus official school, participating in a home school program, religious, recreational, educational, social, or other organized activity sponsored by the city, school district, or other private civic or religious organization that supervises the activity; or

10. The minor is involved in an emergency including, but not limited to, a fire, natural disaster, automobile accident, a situation requiring immediate action to prevent serious bodily injury or loss of life, or any unforeseen combination of circumstances or the resulting state which calls for immediate action; or

11. The minor is in a motor vehicle involved in interstate travel; or

12. The minor is on a sidewalk abutting the minor's residence. [Ord. 1162 § 5, 1999.]

**9.84.020 Aiding and abetting – Parent responsibility.**

A. It is unlawful for any parent, legal guardian or other person knowingly to aid, abet, assist or encourage any minor under the age of 18 years to violate the provisions of this chapter.

B. Every parent, guardian or other person having legal care, custody or control of any person under the age of 18 years who allows or permits a minor to violate any provision of this chapter is guilty of an infraction. [Ord. 1162 § 6, 1999; Ord. 668 C.S. § 16, 1974; 1937 Code § 541.1.]

**9.84.030 Minors in hotels and similar establishments – Report to police.**

Each owner, agent, manager or keeper of a hotel, boardinghouse, lodging house, tenement house, motor court or apartment house shall immediately report to the police department of the city the presence therein of any and all minors under the age of 18 years, unless such minor or minors is or are accompanied by the parent, guardian or other adult person having the legal care and custody of such minor or minors, and in making such reports shall state to the police department of the city the name, age, last known place of abode, the names and residences of the parents, guardian, or of any other custodian of such minor or minors, so far as such information can be ascertained from the minor or minors or otherwise. [1937 Code § 541.2.]

**9.84.040 Minors in certain public places.**

It is unlawful within the city for any proprietor, keeper, clerk or any other person having charge or control of any cafe, tavern, restaurant, bar, eating place or public dance hall to permit any person under the age of 18 years to remain in the public place between the hours of 10:00 p.m. and daylight immediately following unless such person is

accompanied by a parent, guardian or other adult person having the legal care and custody of such minor. [1937 Code § 541.3.]

#### **9.84.050 Enforcement procedure.**

A. Before taking any enforcement action under this article, the law enforcement officer shall ask the minor his or her age and reason for being in a public place during curfew hours. The officer shall not issue a citation to or temporarily detain a minor under this chapter unless the officer reasonably believes that an offense has occurred as provided in this chapter.

B. Upon the first violation of this chapter, the police shall issue to the minor a warning citation regarding the consequences of a second violation of this chapter. The police chief or his designated representative shall mail to the parent(s) of the minor or legal guardian a notification that states that upon a second violation the parents or legal guardian may be held liable for actual administrative and transportation costs. The parents or legal guardian shall be required to sign and return the notification. The notification shall include a space for the explanation of any circumstances relevant to an applicable exemption from the fee as provided in PMC 9.84.070(D). This explanation shall be reviewed by the police chief or his designated representative. If the explanation is found to be insufficient, the representative may request a consultation with the parents or legal guardian of the minor for the purpose of discussing the circumstances claimed to be relevant to an applicable exemption. [Ord. 1162 § 7, 1999; Ord. 668 C.S. § 16, 1974; 1937 Code § 541.4.]

#### **9.84.060 Violations.**

A. **Infractions.** Notwithstanding any other provision of this code, when a person under the age of 18 years is charged with a violation of this code, and a peace officer issues a notice to appear to that minor, the charge shall be deemed an infraction unless the minor requests that a petition be filed under Section 601 or 602 of the Welfare and Institutions Code.

B. **Juvenile Traffic Court Appearance.** Any person issued a citation for a violation of this chapter must appear before the juvenile traffic court within the prescribed time to adjudicate the citation. Any person appearing before the juvenile traffic court must be accompanied by a parent or guardian. The hearing officer shall not adjudicate the citation otherwise and shall continue the matter until such time as the minor is accompanied by a parent or guardian.

C. **Failure to Appear Before the Juvenile Traffic Court.** Any person who has been issued a citation for a violation of this chapter who fails to appear before the juvenile traffic court shall be reported to the State Department of Motor Vehicles, and shall have his or her driver's license suspended until the citation is adjudicated. If the person does not have a driver's license, the right to a license will be suspended until the citation is

adjudicated. At the adjudication of a citation for which an offender initially failed to appear, the court shall be required to impose community service work and a fine.

D. First Offense. Upon adjudication of a first infraction the court shall impose a fine of \$35.00. The court may also require 20 hours of community service work, instead of or in addition to the above-referenced fine. The court may delay imposition of the fine and/or community service obligations for a period of 60 days. If the juvenile attends all classes during those 60 days and provides the court with a letter from the school verifying that attendance, the court may thereafter waive the fine and community service hours obligation.

E. Second Offense within One Year. Upon adjudication of a section infraction within one year, the court shall impose a fine of \$75.00 and may suspend or delay the issuance of a driver's license for 60 days. The court may also require 20 hours of community service work, instead of or in addition to the above-referenced fine.

F. Third Offense within One Year. Upon adjudication of third and subsequent infractions within one year, the court shall impose a fine of \$150.00 and may suspend or delay the issuance of a driver's license for 90 days. The court may also require 20 hours of community service work, instead of or in addition to the above-referenced fine. [Ord. 1162 § 8, 1999; 1937 Code § 541.5.]

#### **9.84.070 Cost recovery.**

A. Determination by Court. When a court determines that a minor less than 18 years of age is subject to civil or criminal or criminal liability based on violation of curfew, truancy or other willful misconduct, it may provide that the parent(s) or legal guardian(s) of the minor shall be jointly and severally liable for the cost of providing law enforcement personnel to supervise the minor during his or her detention, over and above the cost of services normally provided by the city's law enforcement agency.

B. Determination by Chief of Police. When the chief of police or designee thereof determines that the city's law enforcement agency incurred costs over and above the cost of services normally provided by the agency in providing law enforcement personnel to supervise a minor during his or her detention for violation of curfew, daytime loitering, truancy or other willful misconduct, and when it has been determined by a court that the minor was civilly or criminally liable for such misconduct, the parent(s) or legal guardian(s) of the minor may be assessed, and billed for, such additional costs. In the alternative, the city may require community service in lieu of payment of the city's administrative costs.

C. Appeal. Any person receiving a bill for law enforcement services pursuant to this chapter may, within 15 days after the billing date, file a written request appealing the imposition of the charges. Any billing sent pursuant to this section shall inform the billed party of the right to appeal the billing. Any appeal regarding the billing shall be heard by the city manager, or designee thereof, as the hearing officer. Within 10 days after the

hearing, the hearing officer shall give written notice of the decision to the appellant. Upon the filing of a request for an appeal, payment of the bill for the law enforcement services shall be suspended until notice of the decision of the hearing officer is issued. If the appeal is denied in part or in full, all amounts due to the city shall be paid within 30 days after notice of the decision of the hearing officer. The hearing officer's decision is final.

D. Exemption From Administrative Costs. The hearing officer's decision may:

1. Provide for a waiver of the payment of the fee by the parent(s) or legal guardian upon a determination that the minor has made reasonable efforts to exercise supervision and control over the minor;
2. Provide for a determination of the ability to pay the fee and provide that the fee may be waived if neither the minor nor the parent(s) or legal guardian has the ability to pay the fee;
3. Provide for the performance of community service in lieu of imposition of the fee; and/or
4. Provide for a waiver of the payment of the fee by the parent(s) or legal guardian upon a determination that the parent(s) or legal guardian has limited physical or legal custody and control over the minor.

E. Court Fines and Community Service. Any fines or community service imposed by a court shall be considered separate and distinct from any administrative fines required to be paid to the city. [Ord. 1162 § 9, 1999.]

**RICHMOND  
DAYTIME CURFEW ORDINANCE**

11.61.010 - Finding and determination.

The City Council finds and determines that school-aged children, with certain exceptions, are required to be in school. When in school they are under the supervision of adults. Parents, police, and the community at large rely on the schools to supervise the minors in their charge. When children are absent from school without excuse, they are no longer under the watchful eye of school authorities, and for that reason, are at greater risk of both being harmed and of causing harm to others. The Council further finds that it has a strong and legitimate interest in the welfare of its young citizens, whose immaturity, inexperience, and lack of judgment may sometimes impair their ability to exercise their rights wisely. The Council further recognizes that protecting the welfare of minors by reducing juvenile crime and victimization is an important governmental interest and recognizes the risks associated with minors who the community assumes are being supervised at school, but who in fact are not. The Council therefore finds that this ordinance addresses these concerns by prohibiting the presence of unsupervised minors in public places during normal school hours.

(Ord. No. 16-10 N.S., § 1, 4-20-2010)

11.61.020 - Unsupervised minors prohibited in public places when school is in session.

It shall be unlawful for any minor who is subject to compulsory education or to compulsory continuation education to be in or upon any public street, highway, road, alley, park, playground, or other public ground, public place, public building, place of amusement, eating establishment or vacant lot 30 minutes or more after school commences and 30 minutes or more prior to the time school ends on days when said minor's school is in session. This section does not apply:

(a)When the minor is accompanied by his or her parent, guardian, or other adult person having the care or custody of the minor; or

(b)When the minor is on an emergency errand directed by his or her parent or guardian or other adult person having care or custody of the minor; or

(c)When the minor is going or coming directly to or from his or her place of gainful employment or to or from a medical appointment; or

(d)To any minor who has permission to leave school campus for lunch or school-related activity and has in his or her possession a valid, school issued, off-campus permit; or

(e)When the minor is exempt by law from compulsory education or compulsory continuation education; or

(f)When the minor is authorized to be absent from his or her school pursuant to the provisions of Cal. Education Code § 48205, or any other applicable State or federal law. (Ord. No. 16-10 N.S., § 1, 4-20-2010)

11.61.030 - Other prohibited conduct.

(a)It shall be unlawful for a minor's parent or legal guardian to knowingly permit, allow, suffer or encourage such minor to violate any provision of Section 11.61.020. The parent or legal guardian of any minor subject to this ordinance may be charged with a misdemeanor if the minor is found in violation of this ordinance three (3) or more times during a single school year. The parent or legal guardian may also be subject to mandatory mediation and/or family counseling if they fail or refuse to control the affected minor's non-permitted appearing in public during designated school hours.

(b)It shall be unlawful for a person who is the owner or operator of any motor vehicle to knowingly permit, allow, suffer or encourage a violation of any provision of Section 11.61.020

(c)It shall be unlawful for the operator or any employee of any establishment, to knowingly permit, allow, suffer 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 this chapter.

(Ord. No. 16-10 N.S., § 1, 4-20-2010)

11.61.040 - Penalty.

(a)Notwithstanding any other provision of this Code, including Section 1.04.100(a), any minor found in violation of this ordinance shall be subject to an infraction citation and ordered to appear in the Contra Costa County Juvenile Traffic Court. The court may order the minor into a diversion or youth intervention program including any other youth program approved by the courts and/or City of Richmond.

(b)At the sole discretion of the arresting officer, any minor found in violation of this chapter shall be immediately returned to his or her home if an adult is present there and the residence is within the Richmond City limits, or taken to the parent or guardian's place of employment. If the officer is unable to locate the parent or guardian or is unable to transport the minor to the parent or guardian's location, the minor shall be placed in a designated secure location, as determined by the police department, until such time as

a parent or legal guardian is notified and arrives to take custody of the minor or the minor's school is no longer in session.

(c)It shall be unlawful and a misdemeanor for the parent or legal guardian of any minor taken into protective custody for violation of this chapter to refuse or fail to timely respond and assume custody of the minor upon notification that the minor has been detained for violation of this chapter.

(d)Any person over 18 years of age and/or any operator or employee of any establishment found in violation of Section 11.61.030 shall be guilty of a misdemeanor. (Ord. No. 16-10 N.S., § 1, 4-20-2010)

11.61.050 - Remedies not exclusive.

Remedies under this chapter are in addition to and do not supersede or limit any and all other remedies including administrative citations, civil and/or criminal actions. The remedies provided for herein shall be cumulative and not exclusive.

(Ord. No. 16-10 N.S., § 1, 4-20-2010)

11.61.055 - Community review committee.

A Community Review Committee is hereby established to evaluate the operation and effects of the curfew imposed by this chapter. The Committee shall consist of stakeholders with an interest in the curfew ordinance, including but not limited to parents, students, the school district, and youth centers, and other interested community organizations. The Committee shall meet quarterly beginning with the commencement of the 2010—2011 school year. After the second quarterly meeting, the Committee shall meet annually. The Committee shall present its conclusions to the City Council at a regularly scheduled meeting following each of the Committee's meetings. (Ord. No. 16-10 N.S., § 1, 4-20-2010)

**SAN PABLO  
DAYTIME CURFEW ORDINANCE**

**9.32.010 Purpose and intent—Daytime curfew.**

A. State law requires all persons between the ages of six and eighteen 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. Regular school attendance promotes employability upon graduation and reduces delinquency as well as the potential for future dependence upon public assistance.

B. The community as a whole suffers when a minor student is not attending school. Truancy or unexcused absenteeism from school results in a loss of educational opportunities to the student and a loss of revenue to the 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 behaviors of truants when they should be in school.

C. It is the intent of the city council of the city of San Pablo, by this chapter and in cooperation and coordination with the West Contra Costa County Unified School District, by the exercise of the city's traditional police powers and its curfew powers over minors, to establish and enforce a curfew upon minors of school age on school days during the hours between eight a.m. and two p.m., with stated exceptions, in order to provide protection for the community and public property from deleterious effects of truancy. This is not intended to abridge or interfere with the lawful rights of parents or other legal guardians or to contravene or supersede the laws of the state of California dealing with such matters.

D. This chapter may be cited as the "San Pablo Youth Protection Ordinance." (Ord. No. 2009-006, § 2, 10-6-09)

**9.32.020 Authority.**

The authority of this chapter is based upon the police power granted to the city by the Constitution of the State of California, Article XI, Section 7, and separate therefrom, the provisions of California Welfare and Institutions Code Sections 625, 626 and 626.5. (Ord. No. 2009-006, § 2, 10-6-09)

**9.32.030 Definitions.**

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Emergency" means an unforeseen combination of circumstances or the resulting state that justifies immediate action. Emergency includes, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation justifying immediate action to prevent serious bodily injury, loss of life or damage to property.

"Guardian" means:

1. A person who, under court order, is the guardian of the person of a minor and may, under appropriate circumstances, include a person who, under court order, is the guardian of the estate of a minor;
2. A public or private agency with whom a youth has been placed by order of a court of competent jurisdiction; or
3. A person who is at least eighteen years of age and authorized by a parent or guardian to have the care and custody of a minor.

"Juvenile" means any person less than eighteen years of age. "Juvenile" is synonymous with "youth" and "minor."

"Loiter" means to delay, to linger or to idle about.

"Minor" means any person less than eighteen years of age. "Minor" is synonymous with "youth" and "juvenile."

"Official warning" means documentation that the minor and/or parent or guardian has been contacted, detained and/or counseled.

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

"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, sidewalks, highways, parking lots, private residences left open to the public without the presence of a parent or guardian as a supervisor and the common areas of schools, hospitals, apartment houses, multiple-family dwellings, office buildings, transport facilities, shopping centers, commercial establishments, retail establishments, and shops.

"Remain" means to loiter, linger or stay, whether on foot or in a vehicle, or fail to leave a public place when requested to do so by a police officer or the owner, operator or person in control of the public place.

"Youth" means any person less than eighteen years of age and is synonymous with the term "minor" and "juvenile."

"Youth protection ordinance hours" shall be from eight a.m. until two p.m. and ten p.m. until five a.m. of the following day. (Ord. No. 2009-006, § 2, 10-6-09)

**9.32.040 Prohibited activity—Daytime curfew.**

It shall be unlawful for any minor subject to compulsory full-time education or to compulsory continuation education to be found away from his or her home between the hours of eight a.m. and two p.m. when absent from school within the city without lawful excuse as defined in Section 9.32.050. (Ord. No. 2009-006, § 2, 10-6-09)

**9.32.050 Lawful excuses for absence from school.**

It shall be permissible for a minor subject to compulsory full-time education or to compulsory continuing education to be found away from his or her home between the hours of eight a.m. and two p.m. under the following circumstances:

- A. When the minor is accompanied by his or her parent, guardian or other adult person having care or custody of the minor.
- B. When the minor is on an emergency errand directed by his or her parent, guardian, or other adult person having care or custody of the minor.
- C. When the minor is going or coming directly to or from his or her place of gainful employment or to or from a medical appointment.
- D. When the minor has permission to leave for lunch or school-related activity and has in his or her possession a valid, school-issued, off-campus permit.
- E. When the minor is going or coming directly to or from a school-approved or school-related business, trade, profession, occupation or program in which the minor is lawfully engaged, such as a work study or work experience program, subject to verification by a proper school authority.
- F. When the minor is exempt by law from compulsory education or compulsory continued education.
- G. When the minor is authorized to be absent from his or her school under the provisions of California Education Code Section 48205, or any applicable state or federal law.
- H. When the minor is going directly to or from an event or activity that is directly related to any medical condition of a parent or other adult person having the care and custody of the minor. (Ord. No. 2009-006, § 2, 10-6-09)

**9.32.060 Enforcement and penalties—Daytime curfew.**

A. A violation of any section in this chapter relating to daytime curfew is an infraction and not a misdemeanor.

B. The fine for this violation shall be fifty dollars upon a conviction for the first offense, or twenty hours of community service; one hundred dollars upon conviction for the second offense within one calendar year of the first offense; and two hundred dollars upon a conviction for the third offense within one year from the second offense.

C. A peace officer or probation officer may assume temporary custody, during school hours, of any minor subject to compulsory full-time education or to compulsory continuation education found away from his or her home and who is absent from school without a valid excuse and return such minor to their school of registration.

D. This section shall not be construed to limit the authority of the court to render any disposition authorized by Welfare and Institutions Code Section 258, subdivision (a) or any other provision of the Juvenile Court Law for violation of this chapter.

E. It is the City Council's Intent that, when made aware of a minor student's violation of this chapter, the West Contra Costa County School District demonstrate its partnership with the city by taking all required actions. (Ord. No. 2009-006, § 2, 10-6-09)

## **2011 PUBLIC PROTECTION COMMITTEE**

### **STATUS REPORT FROM THE EMPLOYMENT AND HUMAN SERVICES DIRECTOR REGARDING WELFARE FRAUD INVESTIGATION AND PROSECUTION**

Attached is a report jointly prepared by the Employment and Human Services Department and the District Attorney's Office describing the three prongs of the Public Assistance Fraud program: EHS Early Welfare Fraud Investigations, EHS Quality Assurance Program, and DA Public Assistance Fraud Investigation/Prosecution Program; and changes in staffing for these programs.

Also attached are program statistics for FY 2010/11 showing that approximately three-quarters of all referrals that are investigated by EHS early detection unit result in a finding of fraud. Between 40% and 50% of all cases investigated for overpayments result in a confirmation of overpayment. Nearly all of the cases prosecuted by the District Attorney resulted in a conviction. Note, however, that less than 20% of the IHSS cases referred for DA prosecution have been completed, which may be due to a limitation in staff resources.

Staff from both departments will be on hand to present the report and answer any questions of the Committee.

#### Background

This referral began in September 2006, when the Employment and Human Services (EHS) Department updated the Internal Operations Committee (IOC) on its efforts to improve internal security and loss prevention activities. The IOC had requested the department to report back in nine months on any tools and procedures that have been developed and implemented to detect changes in income eligibility for welfare benefits.

The EHS Director made follow-up reports to IOC in May and October 2007, describing what policies, procedures, and practices are employed by the Department to ensure that public benefits are provided only to those who continue to meet income eligibility requirements, explaining the complaint and follow-through process, and providing statistical data for 2005/06, 2006/07, and for the first quarter of 2007/08.

Upon creation of the PPC in January 2008, this matter was reassigned from the IOC to the PPC. PPC received a status report on this referral in October 2008 and, again, in June 2010. The Committee requested staff to report back on how the County's program compares to a statewide fraud rate, if such a rate exists. The Committee also requested a follow-up report on the IHSS fraud program and the transition of welfare fraud collections from the Office of Revenue Collection, which was recently disbanded, to the Employment and Human Services Department.

On October 18, 2010, the PPC received a status report from the District Attorney and the Employment and Human Services Director on the Welfare Fraud Investigations and Prosecutions Program, addressing the specific questions of the PPC from the June 21 meeting. As the PPC wishes to monitor performance of the welfare fraud program, it is recommended that this matter be retained on referral with a follow-up report in one year.

**OFFICE OF THE DISTRICT ATTORNEY AND EMPLOYMENT AND  
HUMAN SERVICES DEPARTMENT  
CONTRA COSTA COUNTY**

---

**DATE: October 3, 2011**

**TO: Public Protection Committee of the Board of Supervisors**

**FROM: Joe Valentine, Director, Employment and Human Services  
Mark Peterson, District Attorney**

**SUBJECT: Report on Welfare and In-Home Supportive Services Fraud  
Investigations & Prosecutions**

---

**BACKGROUND**

For a number of years there has been an annual Interdepartmental Services Agreement between the Employment and Human Services Department (EHSD) and the District Attorney's Office (DA) to ensure the investigation and prosecution of fraud in CalWORKS, GA, CalFresh (formerly Food Stamps), IHSS and other assistance programs. Such an agreement is required by State regulations. In order to accomplish the duties and tasks under this agreement, the DA has established the Public Assistance Fraud Unit within the office's Special Operations section. The Fiscal Year 2011-2012 agreement provides funding for one fulltime attorney and one to one and one-half investigators.

In Fiscal Year 2007-2008, the D.A. Public Assistance Fraud Unit was staffed by two fulltime attorneys and two fulltime investigators. However, due to budget restraints suffered by both the District Attorney's Office and EHSD, and the retirement of a Senior Inspector, the staff of the Unit was reduced to one full time attorney and a part time inspector. This staff level continued through most of Fiscal Year 2010-2011. It is hoped that additional funding can be obtained to eventually increase the staffing to, at least, pre-2008 levels.

The Public Protection Committee (PPC) of the Board of Supervisors has requested periodic reports from EHSD and the D.A. demonstrating a high level of commitment to investigating and prosecuting public assistance and IHSS fraud cases. This report covers both the operation of the EHSD Early Fraud Unit and the D.A. Public Assistance Fraud Unit and is in response to that request. The report provides a brief statement on the fraud detection, referral and investigative processes as well as statistical summaries for fiscal year 2010/2011.

## **EHSD WELFARE FRAUD INVESTIGATION PROCEDURES**

Citizens can report suspected public assistance fraud by calling any one of the following numbers:

- California Department of Social Services Fraud Hotline: 1-800-344-8477
- Contra Costa County District Attorney's Office: (925) 957-8604
- EHSD fraud reporting line: (925) 521-5080

The above phone numbers are published on websites, in various publications and posted in EHSD offices. All complaints are forwarded to the EHSD Fraud Prevention Manager for review and appropriate action. The EHSD Fraud Manager forwards complaints to the Eligibility Workers (EWs) for their review and potential Early Fraud Investigation referrals.

All requests for investigations are initiated by EWs via the EHSD Early Fraud Intranet referral system. Referrals are reviewed by the Fraud Prevention Manager and assigned to EHSD Early Fraud Investigators for investigation.

Completed investigations are reviewed by the Fraud Prevention Manager and returned to the EWs for appropriate actions. When fraud is found, the EW assigned the case takes action, including:

- Denying the case
- Discontinuing the case
- Reducing benefits
- Referring the case for overpayment computation and collection

Completed investigations by the EHSD Early Fraud Division that identify potential long term fraud are referred to the District Attorney's Office for further investigation.

## **IN-HOME SUPPORTIVE SERVICES FRAUD AND QUALITY ASSURANCE PLAN**

EHSD's In-Home Supportive Services (IHSS) prepares an Annual Quality Assurance/Quality Improvement (QA/QI) Plan that addresses how EHSD will utilize information obtained through State mandated QA activities to improve the quality of the IHSS program and enhance the IHSS assessment process. Part of the QA function is to perform specific reviews that will improve the quality of the IHSS program. These functions include conducting home visits, desk reviews and other data element comparisons.

Through reviews and referrals, possible fraud is identified for review and investigation. The current process combines the efforts of the EHSD QA staff, the Public Authority and DA staff. IHSS QA staff has worked closely with the DA since the beginning of the Quality Assurance Program. Reports of potential fraud can also be reported to several sources as follows:

State Hotline Number: 1.800.344.3477

State Fraud by e-mail: [FraudHotline@dss.ca.gov](mailto:FraudHotline@dss.ca.gov)

EHSD Quality Assurance and Fraud: 925.363.3671

The State Budget Act of 2009 provided additional funding for the purpose of fraud prevention, detection, referral, investigations and additional program integrity efforts related to the IHSS program. This enhanced funding cannot be used to fund prosecutions. This funding has been available for several fiscal years and may be available for Fiscal Year 2011/12.

To receive this additional funding, the California Department of Social Services (CDSS) requires that Counties develop a plan between the Welfare Department and DA and that this plan be approved by the Board of Supervisors. We are currently waiting for instructions from the state on the requirements for the plan for this year. Once the plan is approved and funding received, the additional State funding will be used to enhance current efforts of the DA investigations unit and the EHSD Quality Assurance Social Workers.

#### **D.A.'S PUBLIC ASSISTANCE AND IHSS FRAUD INVESTIGATION/PROSECUTION UNIT**

The deputy district attorney assigned to the D.A.'s Public Assistance Fraud Unit for Fiscal Year 2010-2011 was originally assigned to the Unit in 2007. She had more than twenty years of experience as a prosecutor at that time and had tried approximately 150 jury trials. Said trials involved murder, aggravated and sexual assaults, and public assistance fraud. As the supervising attorney for the Public Assistance Unit, she supervised the second attorney assigned to the Unit (when it was fully staffed), reviewed and filed criminal complaints, conducted all aspects of each criminal case within the Unit including the preliminary hearing and jury trial. In addition, she supervised the investigative and clerical staff, and communicated regularly with the EHSD investigative and non-investigative staff. She was rotated to another part of the D.A.'s Office on July 15, 2011.

The deputy district attorney currently assigned to the Public Assistance Fraud Unit had previously supervised the D.A.'s Workers' Compensation Fraud Unit for ten years. He has more than twenty-seven years of experience as a prosecutor. He has tried in excess of sixty jury trials, approximately over half of which were felony jury trials. Said trials involved attempted murder, aggravated assault, major drug crimes, and the entire range of other criminal charges. He has also handled all aspects of criminal

prosecution, including law and motion matters, grand jury proceedings, preliminary hearings, etc. Along with experience in the criminal arena, he has extensive experience in using the civil courts to enforce the laws of this state when he spent several years in the Special Operations Unit of the District attorney's Office where major and consumer fraud crimes are prosecuted both criminally and civilly.

In Fiscal Year 2010-2011, the assigned Unit Senior Inspector had over thirty-eight years experience as a law enforcement officer and as an investigator in criminal cases. For the past four years he had been with the District Attorney's Office as a Senior Inspector for the Public Assistance Fraud Unit. His previous experience included ten years with the Alameda County District Attorney's Public Assistance Fraud Unit, and twenty-five years as an Inspector and Officer with the San Francisco Police Department. During his career he has investigated crimes ranging from homicides, aggravated assault, arson, and robberies. He has investigated over three hundred cases of public assistance fraud in Contra Costa and Alameda Counties. During the course of his career, he has testified in thousands of cases in court, and is considered an expert in the fields of homicide investigation and firearms. As the Unit's Senior Inspector, he regularly coordinates his investigations with the assigned deputy district attorney and communicates regularly with the EHSD investigative and non-investigative staff. He initially screens all fraud referrals from EHSD.

An additional one-half time Senior Inspector was assigned to the Unit and began on May 2, 2011. He has 26 years experience as a sworn peace officer. In addition to the Contra Costa County District Attorney's Office, he has served as a Deputy Sheriff with the Contra Costa County Sheriff's Office and worked as a Police Officer for the San Pablo Police Department for almost two years. He regularly coordinates his investigations with the assigned deputy district attorney and communicates regularly with the EHSD investigative and non-investigative staff.

The majority of referrals to the DA Public Assistance Fraud Investigative Unit are from EHSD. The cases selected for investigation are prioritized based on a number of factors, including the amount of the suspected loss or fraud, number of suspects involved, the scheme involved, whether the suspect has been previously suspected of fraud, or has other criminal activities on record, etc. The investigator then begins the investigation of the case. At a recent meeting between the DA and the Director of EHSD, agreement was reached that the threshold for potential welfare fraud cases referred to the DA would be lowered to \$3,000 from the previous threshold of \$5,000. This change is expected to result in a large increase in requests for DA investigations and prosecutions.

- Once the D.A. Inspector has completed the investigative report, it is submitted to the deputy district attorney for review. If criminal charges for Public Assistance Fraud are filed under the following provisions:
  - 10980 Welfare & Institutions Code - Unlawfully Obtaining Public Aid
  - 487 Penal Code - Grand Theft (for IHSS cases)
  - 118 Penal Code - Perjury

Depending upon the nature of the case, suspects who are charged may either be sent a Notice to Appear in court or have a warrant issued for their arrest.

Defendants that have been convicted have received sentences involving the following:

- Time in prison or jail, ranging from a few days to several years (not all defendants receive custodial time as this is generally dependant on the amount of the loss and prior criminal record.)
- Probation (for jail sentences) up to five years, or parole (for State prison sentences)
- Community Service hours-generally 20 to 360 hours
- Restitution and fines
- Work programs

### **STATISTICAL REPORTS**

Statistical Report for fiscal year 2010/11 is attached and covers the following:

- Early Fraud Investigations
- Overpayments Investigations Unit
- District Attorney Public Assistance Fraud Investigations
- District Attorney Prosecutions and Convictions

The statistics used in these reports were extracted from the California State Department of Public Assistance (DPA) Form 266, Fraud Investigation Activity Reports. These reports are submitted to the California State Fraud Bureau on a monthly basis.

### **CONCLUSION**

The DA and EHSD have a long-term relationship that is solidified annually in a written agreement. The two Agencies have an excellent and cooperative working relationship. It is our shared goal that our joint efforts will be fruitful in addressing the issue of fraud in public assistance programs so that the services and resources of these programs are properly used to assist those who truly need these benefits, and to protect the federal, state and local funding that supports these safety net programs.

Contributors to this report include:

Mark Eichman, Senior Deputy District Deputy  
Steve Bolen, Deputy District Attorney in Charge of Special Operation  
Edward Dang, Supervising Deputy District Attorney, Public Assistance Fraud Unit  
Ralph Alvarado, Fraud Prevention Manager (retired) EHSD  
Laura Cox, Fraud Prevention Manager EHSD  
Jackie Foust, Overpayments Unit, EHSD  
William Weidinger, IHSS Division Manager, EHSD  
Lorraine Gaul, IHSS Quality Assurance, EHSD



## STATISTICAL OUTCOMES

JULY 1, 2010 – JUNE 30, 2011

### EARLY FRAUD INVESTIGATIONS (EFI)

| <b>REFERRALS</b>                        | <b>CASH</b> | <b>FOOD STAMPS</b> |
|---|-------------|--------------------|
| Investigation Referrals Received        | 611         | 765                |
| Investigations Completed                | 516         | 619                |
| Fraud Found                             | 381         | 452                |
| Fraud Not Found                         | 135         | 167                |
| <b>INVESTIGATION RESULTS</b>            |             |                    |
| Denials                                 | 124         | 159                |
| Discontinuances                         | 143         | 159                |
| Benefits Reduced                        | 76          | 52                 |
| Fraud found no adverse Financial impact | 38          | 82                 |

### OVERPAYMENTS INVESTIGATIONS UNIT

|   | <b>CASH</b>  | <b>FOOD STAMPS</b> |
|---|--------------|--------------------|
| Overpayment Computation Referrals Received                | 224          | 840                |
| Number of Overpayments Established                        | 117          | 343                |
| Dollar Amount of Overpayments                             | \$451,503.00 | \$656,063.00       |
| CalWORKS/Food Stamps Combo Cases Referred for Prosecution |              | 5                  |
| Non Assisted Food Stamps Cases Referred for Prosecution   |              | 1                  |

### DISTRICT ATTORNEY WELFARE FRAUD INVESTIGATIONS

| <b>INVESTIGATIONS</b>       | <b>CASH</b>              | <b>FOOD STAMPS</b> | <b>IN-HOME SUPPORTIVE SERVICES</b> |
|-----------------------------|--------------------------|--------------------|------------------------------------|
| Referrals Received          | 5                        | 6                  | 93                                 |
| Referrals Completed         | 5                        | 4                  | 18                                 |
| <b>PROSECUTIONS</b>         |                          |                    |                                    |
| Cases Filed for Prosecution | 5                        | 3                  | 4                                  |
| Convictions                 | 5                        | 4                  | 4                                  |
|                             | <b>Public Assistance</b> |                    | <b>IN-HOME SUPPORTIVE SERVICES</b> |
| Court Ordered Restitution   | \$41,763                 |                    | \$88,775                           |