

# CITY OF MILWAUKEE

Form CA-43

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February 24, 2004

Common Council  
200 East Wells, Room 205

RE: File Number 031508 – Amendment to Section 106-23 relating to curfew hours for minors

Dear Council Members:


The Wisconsin Supreme Court ruled in 1988 that our curfew ordinance, Section 106-23 of the Milwaukee Code of Ordinances, was constitutional. *City of Milwaukee v. K.F.*, 145 Wis. 2d 24, 46-47 (1988). However, the Seventh Circuit Court of Appeals recently issued a decision that calls into question the constitutionality of Section 106-23. *Hodgkins v. Peterson*, No. 01-4115, 2004 WL 99028, (7<sup>th</sup> Cir. Jan. 22, 2004). *Hodgkins* involved a challenge to an Indiana curfew statute. *Id.* at \*4. The Court ruled that the Indiana statute was unconstitutionally overbroad, in that it placed a “chill...on the exercise of First Amendment rights by minors.” *Id.* at \*13.

Section 106-23, (like many other curfew ordinances that have been enacted throughout this state and in neighboring states), does not currently contain an exception for the exercise of First Amendment rights. For this reason, Section 106-23 is now vulnerable to a challenge of the type made in *Hodgkins*. The City of Chicago, Illinois and the League of Wisconsin Municipalities have reached the same conclusion.

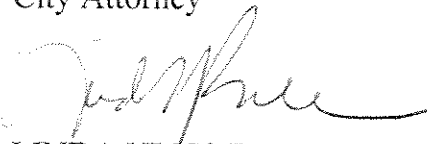
In light of the *Hodgkins* decision, and in order to resolve any doubt as to the constitutionality of our curfew ordinance, we have recommended that Chief Nannette Hegerty temporarily enforce Section 106-23 as if it had already been amended to comply with the Seventh Circuit decision. Further, we are attaching an amendment to Section 106-23, which creates an exception for First Amendment activities.

Common Council  
February 24, 2004  
Page 2


Very Truly Yours,



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KMZ:kmz  
c: Ronald Leonhardt  
1049-2004-239:77967

..Number  
031508  
..Version  
SUBSTITUTE 1  
..Reference

..Sponsor  
THE CHAIR

..Title  
An Ordinance to amend Section 106-23 of the Milwaukee Code relating to exceptions to the curfew hours for minors.

..Analysis  
This ordinance amends section 106-23 to include an exception for the exercise of First Amendment rights.

..Body  
The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1: Section 106-23 of the code is amended to read:

**106-23. Loitering of Minors (Curfew Hours).** It shall be unlawful for any person under the age of 17 years to congregate, loiter, wander, stroll, stand or play in or upon the public streets, highways, roads, alleys, parks, public buildings, places of amusement and entertainment, places of employment, vacant lots or any public places in the city either on foot or in or upon any conveyance being driven or parked thereon, between the hours of 10 p.m. and 5 a.m. of the following day, official city time, Sunday through Thursday and between 11 p.m. and 5 a.m. Friday and Saturday, from September 1 through May 31; and between 11 p.m. and 5 a.m. from June 1 through August 31, ~~unless accompanied by his or her parent, guardian or other adult person having his or her care, custody or control.~~

1. EXCEPTIONS. This section shall not apply where the actor was accompanied by his or her parent, guardian or other adult person having his or her care, custody or control, or where the actor was exercising First Amendment rights protected by the United States Constitution or the Wisconsin Constitution, including freedom of speech, the free exercise of religion, and the right of assembly. Unless flight by the actor or other circumstances makes it impracticable, a peace officer shall, prior to issuing a citation for an offense under this section, afford the actor an opportunity to explain his or her reasons for being present in the public place. A peace officer shall not issue a citation for an offense under this section unless the officer reasonably believes that an offense has occurred, and that none of the exceptions described above apply.

~~4.~~ 2. RESPONSIBILITY OF PARENTS. It shall be unlawful for the parent, guardian or other adult person having the care and custody of a person under the age of 17 years to suffer or permit or by inefficient control to allow such

person to congregate, loiter, wander, stroll, stand or play in or upon the public streets, highways, roads, alleys, parks, public buildings, places of amusement and entertainment, places of employment, vacant lots or any public places in the city between the hours of 10 p.m. and 5 a.m. of the following day, official city time, Sunday through Thursday and between 11 p.m. and 5 a.m. Friday and Saturday, from September 1 through May 31; and between 11 p.m. and 5 a.m. from June 1 through August 31, unless the said person under the age of 17 years is accompanied by his or her parent, guardian or other adult person having his or her care, custody or control one of the exceptions described above applies; provided that any parent, guardian or other adult person herein who shall have made a missing person notification to the police department shall not be considered to have suffered or permitted any person to be in violation of this section.

~~2.~~ **3.** RESPONSIBILITY OF OPERATORS. It shall be unlawful for any person, firm or corporation operating places of amusement or entertainment, or any agent, servant or employe of any person, firm or corporation to permit any person under the age of 17 years to enter or remain in such places of amusement or entertainment during the hours prohibited under this section, unless such person is accompanied by his or her parent, guardian or other adult person having his or her care, custody or control one of the exceptions described above applies.

~~3.~~ **4.** RESPONSIBILITY OF HOTELS, ETC. It shall be unlawful for any person, firm or corporation operating a hotel, motel, lodging or rooming house, or any agent or servant or employe of such person, firm or corporation operating a hotel, motel, lodging or rooming house, to permit any person under the age of 18 years to visit, loiter, idle, wander or stroll in any portion of such hotel, motel, lodging or rooming house between the hours of 10 p.m. and 7 a.m. of the following day, official city time; provided, however, that this section does not apply when the minor is accompanied by his or her parent, guardian or other adult person having the care, custody and control of such minor one of the exceptions described above applies.

~~4.~~ **5.** PENALTY. Any person, firm or corporation violating this section upon conviction shall forfeit not less than \$100 nor more than \$200, and in default of payment thereof be confined in the county house of correction not more than 8 days.

Part 2: All ordinances or parts of ordinances contravening the provisions of this ordinance are hereby repealed.

Part 3: This ordinance shall take effect and be in full force from and after its passage and publication.

..LRB

APPROVED AS TO FORM

\_\_\_\_\_  
Legislative Reference Bureau

Date: \_\_\_\_\_

..Attorney

IT IS OUR OPINION THAT THE ORDINANCE  
IS LEGAL AND ENFORCEABLE

\_\_\_\_\_  
Office of the City Attorney

Date: \_\_\_\_\_

...Requestor

City Attorney

..Drafter

KMZ:kmz

2/23/04

1049-2004-466:78263