

## **ACLU objects as Franklin City Council elects to reinstate youth curfew**

*By SUSAN DOUCET / Monitor staff*

At the same time the Franklin City Council was voting on reinstating the city's juvenile curfew, the American Civil Liberties Union of New Hampshire was reaching out to Franklin officials, asking them not to reinstate the curfew because the organization views it as unconstitutional.

The curfew is "unconstitutional and bad policy," Gilles Bissonnette, an attorney at the nonprofit, wrote in an email to Franklin's mayor, city council members, city attorney, police chief and other representatives.

The council, which was holding its meeting during the time that correspondence was sent, approved the reinstatement of the curfew, contingent on a functioning curfew signal. Council members likely did not see the ACLU's letter before voting on the curfew's reinstatement.

Five nights a week, children under 16 will be required to be off city streets and public places at 9 p.m., the time that the fire station's curfew signal will sound.

"I think that this is a way to allow the adolescents a reminder for them that it's time to go home," said Councilor Ted Starkweather. "It may be a culture shock for some of them, but I'm for it."

The curfew, which is backed by a city ordinance and state law, was long enforced in Franklin. Until about two years ago, Franklin had a juvenile curfew for more than two decades. The suspension of the curfew came over concerns of enforceability, which the city no longer sees as an issue.

Bissonnette wrote to officials that curfews "criminalize perfectly innocent conduct and infringe upon parents' fundamental right to decide how to raise their own children," "unnecessarily subject young people to forced interactions with police," and "do not reduce youth victimization or delinquency," according to research.

The curfew horn and enforcement return to the city partially at the request of residents, according to city officials.

"It is something that people became accustomed to," City Manager Elizabeth Dragon said. "We started to actually hear from people saying, 'We want the horn to be blown again, we want the ordinance to be brought back,' because people were starting to notice that adolescents were on the streets late hours of the evening and sometimes early hours of the morning, 1, 2 a.m. . . . they were congregating."

Franklin police Chief David Goldstein said that this summer, the city had “a rash of juvenile contacts,” including children loitering at late hours. “Nothing particularly earth-shattering,” he said.

Sunday through Thursday, children under 16 would be required to be out of public areas from 9 p.m. to 5 a.m. under the curfew. On Friday and Saturday nights, the curfew would be extended to 11 p.m. Extensions would also be made on the evenings before legal holidays.

If the curfew were violated, the police would hold the parents or guardians of the minors accountable. On a first offense, the minor would be brought home or would be picked up by his or her guardian at the police station. Subsequent offenses would result in a misdemeanor charge for the guardian.

Goldstein said that the violations of curfew would be class B misdemeanors, which by state law carry a fine of up to \$1,200, though the city would not necessarily set fines at that rate.

“We could leave it to the court,” he said.

It was not stated when the curfew enforcement would start, other than when the signal begins sounding. The signal was tested Tuesday and was not functional. Dragon said it will cost a few hundred dollars to make the signal operational. Once it is working, the city can then enforce the curfew.

State law says a curfew signal that can be heard in every part of the city must be sounded, at which time minors must be off the street “except (if) they are in the company of a parent, guardian or other suitable adult person.” The city ordinance classifies a suitable person as someone over 18, not under the influence of drugs or alcohol, and who has been approved by the minor’s parent or guardian.

In the letter to Franklin officials, Bissonnette also cited a case from the 1980s that ACLU-NH litigated that involved a similar juvenile curfew in Keene. In this case, the ordinance was struck down.

“The curfew struck down in this 1984 case was between 10pm and 5am with some caveats,” Bissonnette wrote. “As the Court explained: ‘The ordinance, despite its exceptions, sweeps a broad range of innocent behavior into the category of prohibited conduct. The resulting infringement of plaintiffs’ rights of ‘personhood and privacy’ cannot be justified by the City’s countervailing interests in crime prevention, juvenile morality, or parental supervision.’”

Franklin city councilors supported the reinstatement, with the exception of one absentee and one vote against the curfew.

“This is a futile exercise. Not only is it going to make it cost money to blow again,” said Councilor Scott Clarenbach, who voted against the curfew reinstatement. “I understand the chief’s hardships, but I’m not sure that this is the way to deal with it.”

City officials did not immediately respond to the ACLU’s correspondence, as the council meeting ran for about three hours Tuesday night.

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