



Wanaque planning to repeal curfew for minors; move is part of settlement with ACLU

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The borough's 10 p.m. curfew for unaccompanied minors is going to be repealed as part of a lawsuit settlement with the American Civil Liberties Union of New Jersey (ACLU-NJ).

Ordinance 12-0-14, introduced at the Aug. 11 meeting of the Borough Council, will remove the entire chapter regarding the curfew, enacted in 2005, from the municipal code.

According to Borough Administrator Tom Carroll, the repeal is a key element in negotiating a settlement between the borough and ACLU-NJ, which filed a lawsuit in Passaic County Superior Court against Wanaque in March 2013.

"There's a monetary amount being paid to the ACLU," Carroll said, "which the borough's insurance company is covering. The other part of the settlement is repealing the ordinance."

The lawsuit, *Richardson v. Borough of Wanaque*, followed a Sept. 2012 incident wherein police issued a citation to 17-year-old Shaina Harris for violating the curfew, which states that anyone under the age of 18 must be accompanied by an adult in public between the hours of 10 p.m. and 5:30 a.m.

Then 17 years of age, Harris was given the citation after leaving home just after 11 p.m. to walk to the nearby Burger King on Union Avenue. Harris had permission from her mother, Linda Richardson, to visit the restaurant to buy a milkshake.

In filing the suit, attorney Edward Kiel, representing Richardson and ACLU-NJ, wrote that "Wanaque's curfew is an assault on the basic right of children to be with their parents' consent."

On Aug. 11, Carroll said that although the borough had based the ordinance on a state statute permitting municipalities to create curfews, there was insufficient data to support enacting it.

"The judge indicated that there has to be an affirmative reason for needing a curfew before you adopt it," Carroll said. It became clear at that point, he said, that the borough would not be able to win the suit, so the parties opted to enter negotiations.

"We did the best we could to settle," Carroll said.

Borough Attorney Anthony Fiorello explained that the state statute enabling municipalities to create their own curfews had been previously declared "unenforceable," therefore making any ordinances enacted under it also unenforceable.

"There's no legal defense for the curfew," Fiorello said, "because the state statute was deemed unconstitutional."

In proving the need for a juvenile curfew, he said that the borough would have to conduct studies that included crime rates, areas of concern, and statistics for offenses involving minors.

"You have to do more than recite," he said.

Fiorello expressed some disappointment in that fact, especially since the borough ordinance made exceptions for minors going to and from school and church events.

"You'd think that everybody would endorse such an ordinance," he said, "by saying we want to keep our kids free from harm, and we don't want them out after a certain hour."

Carroll said that the ordinance was enacted prior to the state's graduated driver's license program, which restricts probationary drivers from being behind the wheel between 11 p.m. and 5 a.m. unless they have received an employment exemption.

"That has helped somewhat," Carroll said, to keep unaccompanied minors off the streets.

Fiorello said that the decision to settle in the case will not impact the borough's annual Halloween curfew.

"We'll still be able to do a resolution for one night on Halloween," he said.

He added that even without a curfew, police officers will still be able to keep a watchful eye on the activities of minors in public during the overnight hours.

"They don't have to write summonses or tickets," he said. "They can certainly move the children along if there's something going on."

Councilman Dominick Cortellessa asked how the community would be made aware of the curfew's repeal.

Carroll indicated that Suburban Trends would likely publish an article, and that the Police Department had already been briefed on the change.

Cortellessa suggested that a notice be placed on the borough website as well.

The public hearing and vote for final passage of 12-0-2014 will be held at the next Borough Council business meeting, scheduled to begin at 8 p.m. on Monday, Sept. 8 at the municipal building.

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