



COUNTY OF SAN DIEGO

AGENDA ITEM

BOARD OF SUPERVISORS

GREG COX
First District

DIANNE JACOB
Second District

PAM SLATER-PRICE
Third District

RON ROBERTS
Fourth District

BILL HORN
Fifth District

DATE: February 23, 2010 and March 2, 2010

TO: Board of Supervisors

SUBJECT: AMENDMENT TO CURFEW ORDINANCE SECTION 35.103 OF COUNTY CODE OF REGULATORY ORDINANCES (first reading February 23, 2010; second reading March 2, 2010) (District: ALL)

SUMMARY:

Overview

Currently, sections 35.101 through 35.103 of the San Diego County Code of Regulatory Ordinances establish a curfew for minors in the unincorporated areas of San Diego County. Section 35.103, subdivision (c), provides certain defenses that may be raised by a juvenile or the juvenile's parents against prosecution under the ordinance.

A recent Court of Appeal decision indicates that the defenses provided by curfew ordinances must ensure that the curfew restrictions are not overbroad to the extent they impermissibly restrict a minor's First Amendment rights or attendance at, and traveling to and from, other legitimate activities. Therefore, today's action will introduce an ordinance to amend the County's Regulatory Code to amend section 35.103 to comport with the direction of the Court of Appeal decision.

Recommendation(s)

CHIEF ADMINISTRATIVE OFFICER

1. Approve the introduction of the Ordinance (First Reading), read title and waive further reading of the Ordinance:

AN ORDINANCE AMENDING TITLE III, DIVISION 5, CHAPTER 1, SECTION 35.103 OF THE COUNTY CODE OF REGULATORY ORDINANCES RELATING TO CURFEWS FOR MINORS

2. If the Board takes the action recommended in item 1, then on March 2, 2010 (Second Reading) submit the Ordinance for further Board consideration and adoption (Second Reading).

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Fiscal Impact

There is no fiscal impact associated with this action.

Business Impact Statement

N/A

Advisory Board Statement

N/A

BACKGROUND:

Sections 35.101 through 35.103 of the San Diego County Code of Regulatory Ordinances establish a curfew for minors in the unincorporated areas of San Diego County. Section 35.103, subdivision (c), currently provides certain defenses that may be raised by a juvenile or the juvenile's parents against prosecution under the ordinance.

On February 4, 2010, the City of San Diego's curfew ordinance was declared unconstitutional (*In re A. G.*, 2010 Cal. App. LEXIS 132). While the Court recognized that an "unemancipated minor still does not have the right to freely 'come and go at will'... and they lack an unfettered right to travel because their right to free movement is limited at least by their parents' authority to consent to or prohibit movement," the Court nevertheless indicated that curfew ordinances must not impermissibly restrict a minor's First Amendment rights to engage in, or to attend activities involving "entirely benign (or even laudable) conduct."

The County's own curfew ordinance is similar to the City's curfew ordinance in many respects.

While the Court did not suggest specific language to correct the constitutional deficiencies, the Court did seem to focus on allowing travel to and from activities that either involved exercise of First Amendment rights or fell into the rather broad category of "benign" or "laudable" conduct. The Court of Appeal did not explicitly explain how the concepts of "benign" or "laudable" conduct may constitute defenses within the meaning of the curfew ordinance. However, the Court did refer to parental consent and also appeared to approve of various specific activities listed in the City's ordinance that are defenses to curfew violation, which might be considered examples of the types of "benign" activities contemplated by the court.

The County's ordinance includes similar and identical specific activities.

In light of the court's decision, this Board letter recommends adoption of an ordinance amending section 35.103 to add defenses suggested by the Court of Appeal.

While it is possible that *In re A. G.* may be appealed to the California Supreme Court, in the meantime the City of San Diego curfew ordinance appears to have been rendered unenforceable.

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Given the similar nature of the County's curfew ordinance, the County's current ordinance would be subject to a similar challenge.

Today's recommend actions, if approved, will begin the process to change the curfew ordinance to comport with the *In re A. G.* decision.

Linkage to the County of San Diego Strategic Plan

The proposed action in this Board letter supports the Safe and Livable Communities initiative by aiding law enforcement through the enforcement of legally defensible curfew provisions.

Respectfully submitted,

WALTER F. EKARD
Chief Administrative Officer

ATTACHMENT(S)

AN ORDINANCE AMENDING TITLE III, DIVISION 5, CHAPTER 1, SECTION 35.103 OF THE COUNTY CODE OF REGULATORY ORDINANCES RELATING TO CURFEWS FOR MINORS

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AGENDA ITEM INFORMATION SHEET

CONCURRENCE(S)

| | | |
|--|---|--|
| COUNTY COUNSEL REVIEW Written Disclosure per County Charter Section 1000.1 Required | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| GROUP/AGENCY FINANCE DIRECTOR | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> N/A |
| CHIEF FINANCIAL OFFICER Requires Four Votes | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Yes | <input type="checkbox"/> N/A <input checked="" type="checkbox"/> No |
| GROUP/AGENCY INFORMATION TECHNOLOGY DIRECTOR | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> N/A |
| COUNTY TECHNOLOGY OFFICE | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> N/A |
| DEPARTMENT OF HUMAN RESOURCES | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> N/A |

Other Concurrence(s): none

ORIGINATING DEPARTMENT: County Counsel

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AUTHORIZED REPRESENTATIVE:

JOHN SANSONE

County Counsel

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AGENDA ITEM INFORMATION SHEET
(continued)

PREVIOUS RELEVANT BOARD ACTIONS:
N/A

BOARD POLICIES APPLICABLE:
N/A

BOARD POLICY STATEMENTS:
N/A

ORACLE AWARD NUMBER(S) AND CONTRACT AND/OR REQUISITION NUMBER(S):
N/A