

CITY OF SALISBURY
WORK SESSION
JULY 20, 2015

Public Officials Present

Council President Jacob R. Day
Councilwoman Eugenie P. Shields
Councilman John "Jack" R. Heath (via teleconferencing)
Council Vice President Laura Mitchell
Councilman Timothy K. Spies

Public Officials Not Present

Mayor James Ireton, Jr.

In Attendance

City Clerk Kimberly Nichols, Assistant City Administrator Julia Glanz, Public Works Director Mike Moulds, Police Chief Barbara Duncan, City Attorney Mark Tilghman and interested citizens and members of the press.

Salisbury City Council convened in Work Session at 2:20 p.m. in Council Chambers, Room 301 of the Government Office Building immediately following a recess of the Closed Session.

Council President Day read the following names of the victims who died in Chattanooga, TN on July 16, 2015 following a terrorism shooting at a recruiting center and a U.S. Navy Reserve center: United States Marine Corps Lance Corporal Squire Wells; United States Marine Corps Sergeant Carson Holmquest; United States Marine Corps Staff Sergeant David Wyatt; United States Marine Corp Gunnery Sergeant Thomas Sullivan; and United States Navy Petty Officer Randall Smith. Those in attendance then observed a moment of silence.

President Day reported the Closed Session, held prior to convening in Work Session, was recessed at 2:17 p.m. and would be continued after the Work Session adjourned.

Employee Handbook Change – Dept. Director City Residency Requirement

Assistant City Administrator Julia Glanz reported on the change in the handbook that would require future Department Heads hired after August 31, 2015 to live within the City limits of Salisbury because the City of Salisbury would like its employees living within City limits. However, if Administration was interested in hiring someone who did not live in the City, they could advance that name forward and Council could waive the requirement.

Ms. Glanz indicated Mayor Ireton considered this requirement good for the City for many reasons including demonstration of City commitment and being role models for employees within their departments to encourage them to also move within City limits.

Council reached unanimous consensus to advance the resolution to legislative session.

Accepting DNR Grant for Marina Pedestals

Public Works Director Mike Moulds joined Council and explained that the City was awarded a Waterway Improvement Fund grant in the amount of \$25,000.00 from the MD Department of Natural Resources to fund the upgrade and replacement of pedestals at the Port of Salisbury Marina. These pedestals provide power and water to the boat slips so boats can hook up and utilize those services.

Council reached unanimous consensus to advance the resolution to approve the acceptance of the grant in the amount of \$25,000.00.

City Curfew

Police Chief Barbara Duncan joined Council at the table to discuss the City curfew. She invited the Department of Juvenile Services to attend, but they cannot participate in this discussion.

Chief Duncan reported the Salisbury Police Department (SPD) reached out to numerous agencies, thirteen of which spoke with the SPD concerning the curfew and whether they felt this was a tool in which they felt helped reduce crime. She indicated about 50% indicated crime was reduced following the curfew and felt it was a beneficial tool. Most of agencies were able to make contact with a parent or guardian when a child is picked up by the police.

The report Chief Duncan provided showed statistics proving children in the concerned age group were moving around after 10:00 p.m. It is very clear that once they are out of school until the hours of 7 p.m., there is a high rate of juvenile crime. However, in the later evening hours and early morning hours, there is an interesting spike in crime from that age group.

Council comments and discussion included:

- Mrs. Mitchell - How many of the towns are on the Eastern Shore of Maryland? (Chief Duncan answered – Chestertown, Cecilton, Greensboro)
- Mrs. Shields – the American Civil Liberties Union of Maryland (ACLU) sent a letter stating the curfews are illegal, and it is illegal to stop and question (Mrs. Mitchell presented copies of the letter from the ACLU dated July 15, 2015 (attached to these minutes and included as part of the minutes).
- Mr. Heath – Did the A.C.L.U. have challengers?
- Mrs. Mitchell presented copies of the letter from the A.C.L.U. dated July 15, 2015 in which it was indicated the proposed ordinance is prohibited under Maryland law.
- Mrs. Mitchell – when Stop the Violence closed there was a spike in activity in that neighborhood. Would be interested in seeing the statistics for the year prior to their closing and then afterwards. That speaks volumes in the need for a Youth Community Center and a place for them to go after school when there is no one at home.
- Mr. Heath – there could possibly be a trial period to see what happens with the numbers
- Mr. Day – Could the Administration learn enough to know when they were encountering juveniles who would be in violation of this policy. Chief Duncan stated that a trial period could be enacted.

- Mr. Day – concerned about what message the City is sending and if there are people who have identified a solution that works in their neighborhood, why would Council keep those tools out of their hands?
- Mr. Day – questioned in the absence of adequate housing and space to hold a child while contacting their parents or a guardian, where would these children be held?
- Mr. Day was not comfortable taking an officer off the street to handle juveniles
- Mrs. Shields – the public needs to provide input before legislation is voted on
- Mrs. Shields – when Stop the Violence closed down in February, crime spiked
- Mrs. Shields - The Governor's Office should look at ways that we can keep our kids out of the juvenile system by providing safe havens and after school programs. It worked before, but it's been cut
- Mr. Heath – one of the things the Council must realize is that there are essentially three groups – 1) parents who don't care, 2) parents who are very involved, and will come out and speak, 3) medium group of parents which includes a group that are concerned. We should try to reach the majority of the people where we can salvage the most children. He fully supported community involvement, but there will be groups never reached.
- Mr. Spies – no matter where we go with this, we are always talking about the male curve. One end has the outstanding performers and the other end has the 2% of the people who will never come around. (He asked Chief Duncan if she had checked in with the Disproportionate Minority Contact Representative, and if she had any conversation with him. Chief Duncan said they had some discussions, but nothing in depth. He recently attended a Police Community Forum in D.C. to talk about police and resident interaction, and how things can be improved. Her discussion with him was limited, but would get more information from him on that.)
- Mr. Spies – we could investigate the after school programs

Chief Duncan stated that all of the institutions, (DJS, Law Enforcement, City Council, Board of Education) are identifying the same issues, and it's how we support that family unit through that period time when they are in crisis. There are some constitutional heavyweights to be careful of.

Mr. Day suggested that Chief Duncan work with Mr. Tilghman to make the changes to develop an updated ordinance that administration supports, using the Baltimore model but removing elements including age differentiation and certain hours. Also, to return to Council with several alternatives for public engagement to be led and organized by the SPD. Mrs. Mitchell suggested these meetings be held in all of the sectors of the City.

Urban Chicken Ordinance

Mr. Day welcomed Delegate Charles Otto in the audience. Delegate Otto announced he was present to represent Farmers and Planters Co. in the Urban Chicken Ordinance discussion.

The following comments were received from four (4) members of the public:

- Farmers & Planters sell chickens (store is located within the City limits).
- Chickens eat ticks and mosquitoes.

- There is a huge movement across America to bring chickens into your yard (homesteading and becoming self-sustaining).
- It is important for people who care to have ways to self-sustain themselves.
- The City is all about Perdue, and they are all about chickens. The average homeowner should be allowed to have chickens.
- It is part of the American dream to be self-sufficient.
- Chickens do not make bigger messes than dogs or cats that are outside, and they clean up after themselves.
- Chickens make less noise than roosters.
- It is a decision and responsibility to have chickens.
- Can foster good neighbors by sharing eggs.
- Chickens are not as difficult as some people may think, and they are quite enjoyable
- Chickens help educate children and adults in animal husbandry.
- Many small cities and towns are moving in this direction, and there needs to be rules and regulations.
- There is a “grow your own food” trend right now, and to see where your food comes from is always a good thing.
- Only concern is with the Avian Flu that is spreading across the country, but the local geese likely introduce more threat than backyard chickens.
- Discussed the housing needs and protection from the elements that chickens require
- Chickens need companions, and you should not have just one.
- The speaker sees opossums and snakes in the City limits already.
- Wants to use fertilized hay for her garden.

Chief Duncan, Animal Control Officer Patrick Guyer and Colonel Meienschein joined Council at the table. Officer Guyer informed Council that if a flock were removed from a citizen’s property it would have to be destroyed since Animal Control does not have the facility to quarantine fowl. The Humane Society only accepts cats and dogs.

Mrs. Mitchell commented on the section regarding Avian Flu. There are many other diseases that necessitate culling fowl, so that section of the draft legislation may need to be broadened. There are other animals that come along with keeping chickens (snakes, weasels, rats and mice).

Mrs. Shields reported the odor from the Perdue Plant was awful, and even though the people present follow the rules and regulations, there will be more problems because not all people will keep their pens clean. She could not support the legislation.

Mr. Day stated that the legislation is a step in the right direction for the community to help build a sustainable, local economy. He supported the legislation and indicated it is a good idea for the neighborhoods, community, and for linking people within the City of Salisbury to agriculture. His concerns were human and animal welfare and the stresses on City staff and City employees. Citizens are already keeping chickens whether there is an ordinance in place or not, and this is probably best because they must register all flocks with the Department of Agriculture.

Mr. Spies noted that virtually all diseases that transmit from chickens to humans deals with feces, so good husbandry of these animals is what will be required, just as with any other animal.

Council reached consensus to advance the ordinance to legislative session. Mmes. Mitchell and Shields did not support the legislation.

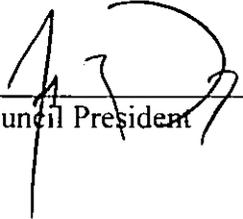
At 4:11 p.m., following a thirteen minute recess, Council reconvened in Closed Session.

At 5:14 p.m., Mrs. Shields moved, Mr. Spies seconded, and the vote was unanimous to adjourn the Closed Session and reconvene in Open Session.

Mr. Day then reported out to the Public that while in Closed Session, Council was provided continued guidance for ongoing negotiations of Lots 1 & 11 development negotiations. Thereafter, with no further business to discuss, the Open Session adjourned at 5:19 p.m.



City Clerk



Council President



July 15, 2015

Mayor James Ireton
125 N. Division Street, Room 304
Salisbury, Maryland 21801-4940

Council President Jacob Day and Members of the City Council
125 N. Division Street, Room 301
Salisbury, Maryland 21801-4940

Dear Mayor Ireton, Council President Day, and Members of the City Council:

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LIBERTIES UNION OF
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OFFICERS AND DIRECTORS
COLEMAN BAZELON
PRESIDENT

SUSAN GOERING
EXECUTIVE DIRECTOR

ANDREW FREEMAN
GENERAL COUNSEL

We write on behalf of the American Civil Liberties Union of Maryland, to express our concern about the legality and policy implications of the juvenile curfew law proposed for the City of Salisbury. After carefully reviewing the proposed ordinance, as well as the data provided by the Salisbury Police Department seeking to substantiate the City's need for a curfew, our view is that the ordinance is not only unnecessary but also inconsistent with Maryland law. On this basis and for the reasons detailed below, we urge you to reconsider the curfew proposal.

As we understand it, the proposed curfew would prohibit any minor under 14 years of age from remaining "in or about any public place or any establishment between the hours of 9 p.m. on any day and 6 a.m. of the following day." Minors at least 14 years old but less than 17 years old would be prohibited from remaining "in or about any public place or any establishment between the hours of 11 p.m. on any day and 6 a.m. of the following day" between the Friday before Memorial Day and the last Sunday of August each year. For the remainder of the year, minors at least 14 years old but less than 17 years old would be prohibited from remaining "in or about any public place or any establishment" between the hours of 11 p.m. and 6 a.m. on Fridays and Saturdays, and between the hours of 10 p.m. and 6 a.m. on any other day of the week.

In addition, the proposed ordinance includes a daytime curfew that would prohibit any minor under the age of 16 from remaining "in or about any public place or any establishment between the hours of 7:30 a.m. and 3 p.m. on any day during which the minor is required to be in school."

I. The Proposed Ordinance Is Prohibited Under Maryland Law.

Although we understand that the City of Salisbury patterned its proposed curfew upon the Baltimore City juvenile curfew enacted last summer, as an Eastern Shore jurisdiction, the City of Salisbury is not permitted to enact these restrictions under Maryland law. Sections 11-301 to 11-308 of the Maryland Code of Local Government govern the adoption of juvenile curfew laws in jurisdictions on the Eastern Shore, and

establish strict limitations upon such laws.¹ See Md. Local Govt. §§ 11-301 to 11-308. Section 11-304 provides, “[A] juvenile curfew ordinance shall state that: (1) a minor may not remain in a public place or on the premises of an establishment **during curfew hours**; . . .” *Id.* at 11-304 (emphasis added). Section 11-301 defines “curfew hours” as only “the hours **between midnight and 5 a.m.**” *Id.* at 11-301 (emphasis added).

Despite the express language of the Maryland Code, Salisbury’s proposed curfew law attempts to expand nighttime curfew hours to also include 9 p.m. until midnight and 5 a.m. until 6 a.m. These four hours do not fall under the Code’s explicit definition of “curfew hours,” and therefore Salisbury is not permitted to adopt curfew restrictions that would apply during these times.

Furthermore, the proposed ordinance also includes a daytime curfew that would apply between 7:30 a.m. and 3 p.m. of each school day. However, these hours are also beyond the definition of “curfew hours” allowed by Section 11-301. In fact, the Juvenile Curfew Subtitle of the Maryland Code of Local Government does not permit the enactment of a daytime curfew at all. Therefore, the daytime curfew provisions included in the proposed ordinance would be invalidated in their entirety if enacted.

A. The Need for a Juvenile Curfew Is Not Supported by the Data Provided by the Salisbury Police Department.

In addition to failing to comply with the specifications set forth in the Juvenile Curfew Subtitle of the Maryland Code of Local Government, the City of Salisbury has also failed to meet a prerequisite for the adoption of a juvenile curfew law on the Eastern Shore. Section 11-303 provides that such laws may be enacted only “[a]fter making independent factual findings demonstrating a local need for a curfew . . .” *Id.* at 11-303 (emphasis added). While the Salisbury Police Department has provided a small amount of data regarding juvenile arrests and field interview reports, these data actually counsel against the need for either a daytime or nighttime curfew.

In fact, the data show that approximately half of all juvenile arrests occur between 3 p.m. and 9 p.m.—that is, during six of the only seven and a half hours *not* covered by either the daytime or nighttime curfews. Last year, for example, 151 of the 313 total juvenile arrests (47.9%) took place between 3 p.m. and 9 p.m. No other six-hour period saw more juvenile arrests. The numbers for 2013 and 2012 are virtually identical: In 2013, 135 of the 282 juvenile arrests (47.9%) took place between 3 p.m. and 9 p.m.; in 2012, 102 of the 199 total (51.3%).

The Police Department’s data regarding field interview reports on juveniles are similarly unconvincing.² These data reveal that approximately 40 percent of FIRs on

¹ Section 11-302 states that the subtitle applies throughout code counties in the Eastern Shore class as established under § 9-302 of the article. Md. Local Govt. § 11-302. Section 9-302 lists Wicomico County, where the City of Salisbury is located, as one of the code counties in the Eastern Shore class. *Id.* at § 9-302(a)(2)(ii).

² While the data show that the greatest number of field interview reports on juveniles occur between 9 p.m. and midnight, it is clear that these FIRs generally do not result in arrests. Last year, for example, although there were 224 FIRs on juveniles between 9 p.m. and midnight, there

juveniles fall into one of three categories: Investigate Suspicious Person, Suspicion, or Suspicious Vehicle. Last year, for example, these three categories of FIRs accounted for 284 of the 664 total FIRs on juveniles (42.7%). In 2013, these three categories made up 246 of the 642 total (38.3%). This shows that Salisbury Police already have the ability to stop and question juveniles, at any time of the day or night, who appear to be engaged in illegal activity, and they are exercising that authority. Enacting a curfew, which makes it illegal to simply be outside at certain times, would only divert police resources by requiring them to stop and question every juvenile who is outside during curfew hours, instead of focusing their attention on those who appear to be committing crimes.

Furthermore, the data provided by the Salisbury Police Department purportedly in support of the juvenile curfew are wholly devoid of any statistics regarding the victimization of minors—either during the day or the night, during curfew hours or non-curfew hours. To our knowledge, the City of Salisbury has not provided any information to support its claim in the proposed ordinance that “research of law enforcement statistics indicate that crime is reduced *and the safety of minors is improved* by the imposition of a curfew for minors.” (Emphasis added.)

B. Independent Empirical Research Shows that Juvenile Curfews Do Not Reduce Youth Victimization or Delinquency.

We seriously doubt, based on the data provided by the Salisbury Police Department as well as independent empirical research, that the City of Salisbury could prove its contention that the curfew would reduce youth victimization or delinquency. Rather, studies of curfew laws have consistently shown that juvenile curfews do not reduce youth delinquency or victimization. See, e.g., Kenneth Adams, *The Effectiveness of Juvenile Curfews at Crime Prevention*, 587 *Annals of the American Academy of Political and Social Science* 136 (2003) (finding “that the evidence does not support the argument that curfews prevent crime and victimization”); Mike Males & Dan Macallair, *An Analysis of Curfew Enforcement and Juvenile Crime in California*, *Western Criminology Review* 1 (2) (1999) (“There is no support for the hypothesis that jurisdictions with curfews experience lower crime levels, accelerated youth crime reduction, or lower rates of juvenile violent death than jurisdictions without curfews.”).

Studies of curfew laws in nearby Washington, D.C. and Prince George’s County have similarly found little to no evidence that such laws prevented crime. See Danny Cole, *The Effect of a Curfew Law on Juvenile Crime in Washington, D.C.*, 27 *American Journal of Criminal Justice* 217 (2003) (“The results, consistent with previous studies, revealed that the curfew law did not reduce total juvenile arrests.”); Caterina Gouvis, *Evaluation of the Youth Curfew in Prince George’s County, Maryland. Final Report*, The Urban Institute (2000) (finding that the impact of the curfew law on the target group was small and not statistically significant).

were only 43 juvenile arrests during the same timeframe. Therefore, the increased number of FIRs cannot support the City’s stated interest in reducing juvenile crime.

II. Juvenile Curfew Laws Are Bad Policy.

In addition to our concerns about the legality of Salisbury's proposed ordinance, the ACLU opposes juvenile curfew laws generally because they unnecessarily subject young people to forced interactions with police, prohibit perfectly innocent (and sometimes valued) conduct, and restrict parents' ability to decide how to raise their own children. Furthermore, the unfortunate reality has been that curfew laws are often applied in a discriminatory manner such that they disproportionately affect young people of color.

A. The Proposed Curfew Law Will Unnecessarily Subject Young People, Especially Young People of Color, to Forced Interactions with Police.

Because it is impossible to pinpoint a person's precise age simply by looking at him or her, enforcement of a juvenile curfew would require police to stop every young-looking person who is outside during curfew hours, and demand that they prove their age. This means that many young adults who are beyond the scope of the curfew will be unnecessarily subjected to increased interactions with police.

In fact, Salisbury's proposed ordinance contains an enforcement provision that states, "If a police officer has reason to believe that a minor is in violation of [either the daytime or nighttime curfew], the police officer *shall* seek to obtain from the minor: (1) the minor's name, address, *school or other valid identification*, and age; and (2) the name of the minor's parent or parents." (Emphasis added.) Does this mean that failure to produce identification upon request constitutes a violation of the ordinance? Can an 18-year-old, or a 21-year-old, who is lawfully outside at times within the curfew's reach, be taken into custody simply for failing to provide a "valid identification"?

According to Census statistics, approximately 22 percent of Salisbury's population is under 18 years old, and therefore would be subject to the proposed curfew restrictions. However, approximately 20 percent of Salisbury's population is between the ages of 18 and 24. Assuming that most people in this age group look young enough for a police officer to "reasonably suspect" that they might actually be minors, this means that 42 percent of Salisbury's population would be subject to stops and questioning by police if the proposed curfew were enacted.³

Furthermore, as too often occurs, it is likely the proposed curfew would be enforced in a discriminatory manner so that it would disproportionately affect young people of color. Numerous studies have found that juvenile curfews have a stunningly disproportionate impact on minority children. See, e.g., Adams, *supra* at 153–54 (finding that African American children are arrested and cited for curfew violations at a rate much

³ The concern that police will enforce a juvenile curfew against "young-looking" adults is far from hypothetical and has been recognized by multiple courts. See *Anonymous v. City of Rochester*, 915 N.E.2d 593, 597 n.4 (N.Y. 2009) ("[T]his case was not rendered moot when plaintiff Jiovan turned 17 because he may still be detained under the curfew if, to an officer, he appears to be under 17 and fails to offer proof of age."); *Ashton v. Brown*, 339 Md. 70, 82 (1995) (19-year-old was detained, photographed, handcuffed, searched, and held on police bus for 40 minutes during enforcement of juvenile curfew that only applied to children under 18).

higher than whites and “the available research suggests a pattern of disproportionate curfew enforcement against minorities”); Mary Lou O’Neil, *Youth Curfews in the United States: The Creation of Public Spheres for Some Young People*, 5 *Journal of Youth Studies* 49 (2002); J. David Hirschel, Charles W. Dean & Doris Dumond, *Juvenile Curfews and Race: A Cautionary Note*, 12 *Criminal Justice Policy Review* 197 (2001).

Maryland’s highest court has also recognized the potential for discriminatory enforcement of juvenile curfews. See *Ashton v. Brown*, 339 Md. 70, 82 n.5 (1995) (noting that data regarding the City of Frederick’s juvenile curfew “reveal that the proportion of African-Americans arrested for curfew violations was substantially greater than the proportion of African-Americans to the population at large”).

B. Curfew Laws Criminalize Perfectly Innocent Conduct and Infringe Upon Parents’ Fundamental Right to Decide How to Raise Their Own Children.

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Parents and guardians are in the best position to know what rules and restrictions work best for their kids. The proposed curfew, instead of accounting for individual differences among children of the same and different ages, arbitrarily groups them into four categories with various restrictions applying to each one: children under 14; 14- and 15-year-olds; 16-year-olds; and those 17 years old or above. This hierarchy fails to take into account that some 13-year-olds are wise beyond their years, while some 17-year-olds continue to need parental supervision. Parents, who know their children’s varying levels of maturity and responsibility, should be able to make individualized rules about when their children need to be home, and what conduct is or is not permitted at various times of the day.

A number of courts throughout the country have recognized this fundamental right of parents to prescribe their own rules and regulations for their children, and have invalidated curfew laws that impermissibly infringe upon that right. See, e.g., *Anonymous v. City of Rochester*, 915 N.E.2d 593 (N.Y. 2009) (concluding that Rochester’s juvenile curfew “imposes an unconstitutional burden on a parent’s substantive due process rights” and “fails to offer parents enough flexibility or autonomy in supervising their children”).

Moreover, Salisbury’s proposed curfew would prohibit perfectly innocent, and sometimes even valued, conduct. For example, it prohibits two 13-year-olds from meeting at a coffee shop after 9:00 p.m. to study for tomorrow’s math test, even if they are being supervised by one’s 17-year-old brother; it prohibits a 16-year-old from running an errand for his mom, who has to stay home to take care of a much younger sibling, at 10:00 on a Thursday night; it prohibits a 15-year-old from walking the family dog on public property at 10:00 on a Tuesday before he goes to bed.

And because the permissible exceptions to the daytime curfew are even more limited than those that apply at night, there are even more examples of perfectly innocent conduct that would constitute a curfew violation during the day: A 15-year-old who is lawfully excused from school for religious observance could not walk to his place of worship without a parent unless he has received prior “written proof from school authorities excusing his or her attendance at that particular time;” a 14-year-old who is excused from school due to illness could not be taken to the doctor by her 17-year-old

sister unless she was able to predict her illness in advance and obtain the required written proof from school authorities.

III. Salisbury's Proposed Curfew Raises Concerns Under Both the Federal and State Constitutions.

Salisbury's proposed curfew law is sufficiently extreme—and the justifications for it sufficiently dubious—to raise concerns about its constitutionality under the United States and Maryland constitutions. Both federal and state courts around the country have subjected curfew laws to strict or heightened standards of scrutiny and have routinely struck down ordinances as unconstitutional. *See, e.g., Hodgkins v. Peterson*, 355 F.3d 1048 (7th Cir. 2004); *Ramos v. Town of Vernon*, 353 F.3d 171 (2d Cir. 2003); *Nunez v. City of San Diego*, 114 F.3d 935 (9th Cir. 1997); *City of Rochester*, 915 N.E.2d 593; *State v. J.P.*, 907 So.2d 1101 (Fla. 2004). In such cases, courts have placed the burden on local governments to show, with actual evidence, that the ordinance is substantially related to achieving important government interests. As discussed above, the City of Salisbury has not, and most likely cannot, meet this burden.

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The Baltimore City curfew, after which Salisbury's proposal is modeled, has not yet been challenged in court. However, the City of Salisbury cannot defend its proposed curfew law by citing the same interests found in the Baltimore ordinance, as it has attempted to do here, because of the enormous differences between the two cities. Salisbury, a city of approximately 34,000 people and 14 square miles in area, does not face the same issues as Baltimore, a city of approximately 620,000 people and 92 square miles in area. Thus, the extremely restrictive curfew limitations of the proposed ordinance would be entirely inappropriate in the City of Salisbury, and the City would not be able to meet its burden of showing that the ordinance is substantially related to achieving important government interests.

Furthermore, the proposed ordinance is much more restrictive than those curfew laws that have been upheld by the courts in a number of ways. This includes requiring children to be kept inside as early as 9 p.m., arbitrarily distinguishing between minors of different ages, and failing to include an exception for performing errands with a parent's permission. For example, in *Schleifer by Schleifer v. City of Charlottesville*, the court repeatedly pointed to the curfew's limited hours (midnight until 5 a.m. on weeknights; 1 a.m. until 5 a.m. on weekends), general application to all minors under 17, and provision of an exception for running errands with a parent's permission as evidence that the law was not overbroad. 159 F.3d 843, 852 (4th Cir. 1998).

Salisbury's proposed curfew is even more restrictive than many curfew laws that have already been invalidated by the courts. *See, e.g., Ramos*, 353 F.3d at 187 (curfew with limited hours (11 p.m. to 5 a.m. on weeknights; midnight to 5 a.m. on weekends) unconstitutionally infringes on minors' right to equal protection); *City of Rochester*, 915 N.E.2d 593 (curfew with limited hours (11 p.m. to 5 a.m. on weeknights; midnight to 5 a.m. on weekends) violates "substantive due process rights of minors to enjoy freedom of movement and of parents to control the upbringing of their children"). In fact, we have found no case concerning a juvenile curfew—either upholding or invalidating—that

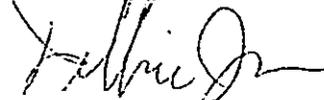
requires children to be inside as early as 9 p.m. or that requires police to distinguish between minors of four different age groups.

* * *

The ACLU strongly opposes curfew laws, and has filed litigation in numerous cities and towns around the country challenging such laws. In our view, the City of Salisbury's proposed ordinance is prohibited under Maryland law, unsupported by empirical evidence, bad policy, and arguably unconstitutional. For these reasons, we urge the Mayor and City Council members to reject the proposed ordinance and any other juvenile curfews that may come under consideration.

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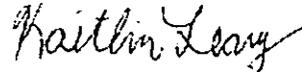
Sincerely,



Deborah A. Jeon
Legal Director



Sonia Kumar
Staff Attorney



Kaitlin Leary
Law Clerk