

# Parental Escort Policies

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**As the number of teen curfew policies at shopping centers rises, owners and tenants must be aware of the benefits, challenges, and limitations of these policies.**

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**SINCE THE MALL OF AMERICA** located in Bloomington, Minnesota instituted one of the first programs in 1996, teen curfew policies—now more commonly referred to as parental escort policies—have increased in popularity and frequency among owners of shopping centers. According to the International Council of Shopping Centers, a shopping industry trade organization, there are currently 35 shopping centers in the United States that have some form of escort policy. Nearly half of these policies were instituted within the past two years. These policies require teens under a specific age to be accompanied by an adult if they are on mall property, usually the common areas of the mall, past a certain hour. In general, these policies are usually limited to weekend days and apply to people 18 years of age or younger. The message that mall owners want to communicate to teens and to the community at large with these policies is not that teens are unwelcome, but that they should not be on mall premises without adult supervision past a certain hour of the day.

The move toward parental escort policies is being driven by a shift in thinking about the very nature of the shopping mall. The first enclosed shopping malls built in

the 1950s were designed as much for social interaction as they were for consumer shopping. This led to the initial popularity of the mall with suburban housewives during the 1950s, and later with teenagers during the 1980s and 1990s. But today mall owners and tenants want the shopping center to serve the singular purpose of commerce alone. This change in thinking about malls has been driven in part by population growth and changing social norms. Many mall owners have complained of larger numbers of teens who come to the mall strictly for social purposes, and finding children as young as age nine who have been dropped off alone by their parents.

As more mall owners consider such policies, it is key for owners, tenants, and their counsel to understand the unique characteristics of escort policies and how best to implement them.

#### **WEIGHING THE COSTS AND BENEFITS •**

Perhaps the most important benefit of parental escort policies is that they create the perception of a safe, clean, and friendly shopping environment for the general public. The vast majority of mall owners who have instituted escort policies have cited public perception as the number one rationale for doing so. Anecdotal evidence suggests that negative perceptions are often strongest with respect to malls that attract large groups of teenagers. This was the case even when the shopping center experienced little or no crime committed by teenagers or any other individuals. Although actual incidents of crime were fairly low, these owners did receive complaints about teenagers who blocked passageways and intimidated other shoppers by their presence. And although shopping centers may in actuality be very safe, perception of a center as an unsafe environment can easily take hold in the surrounding community. Furthermore, most owners believe that a positive perception of the mall environment leads to more shoppers and better revenues for both owner and tenants. Therefore, a parental escort

policy is one of the ways in which a shopping center owner can change public perception of a mall. But despite the growing popularity of such policies and their effect on the public's psyche, mall owners and tenants should be aware of several realities about the effectiveness and logistics of curfew policies before implementing them.

#### **Diverging Interests**

Escort policies may raise conflicts between tenants and shopping center owners, because of the expense associated with such policies. Depending on the method of implementation, escort policies can require substantial increases in security personnel and added hours for employees who must monitor underage teens while they wait for a parent or guardian to retrieve them. Security costs are regularly passed through to tenants as common area maintenance charges. But because parental escort policies are often driven by a desire on the part of the mall owner to combat negative public perception, and not necessarily by a specific security need, charges for such policies may become a source of conflict between owners and tenants. Audit rights have become a standard part of most commercial retail leases, and some courts are allowing tenants to audit charges even in the absence of such previously agreed-upon rights. In light of this potential conflict of interest, owners should be advised to think carefully about the increased costs of escort policies before their initiation.

#### **Mixed Economic Impact**

The economic impact of parental escort policies is unclear. Some owners and tenants claim that sales have increased under parental escort policies because parents are required to shop with, and thus buy for, their children. Other owners and tenants state that revenues for either the entire center, or for teen-oriented stores in particular, declined after implementation of the policy. Researchers of teen spending habits estimate that by 2008, Gen-

eration Y (ages 10 to 25) will spend \$205 billion annually. When initiating these policies, shopping center owners must be careful not to alienate or unnecessarily restrain consumers with fast-growing spending power. And although escort policies may prevent teenagers from relying on the mall as a source of social interaction, they may encourage such behavior in older age groups. For example, one Michigan-area mall reported that the number of senior citizens strolling its corridors doubled after the implementation of a parental escort policy. But the key measure of the policy's success will be whether those seniors will spend more money, or more than teenagers would have, while they stroll. Parental escort policies may provide a more pleasant environment for particular shoppers, but owners and tenants must do more to translate the increased presence of those shoppers into increased sales.

### **Industry Competition**

Shoppers today are concerned with time constraints as much as they are with trends and prices. In this regard, malls must compete with multi-purpose developments designed to serve several retail needs at once.

Enclosed shopping centers have been favored as the model for the American shopping experience over the past 60 years. But as the philosophy behind the shopping center has evolved, so has the competition. The new trend is toward “de-malling” the mall. De-malling refers to a return to open-air, main street shopping developments that once prevailed in Europe and the United States in the early 20th century. These developments are also known as urban villages, town centers, or lifestyle centers, and they differ from shopping centers in substance as well as form. Open-air centers combine entertainment, housing, grocery stores, and sports or other activities along with typical retail stores.

Multi-purpose developments provide direct and fierce competition for consumers of every age

group. The appeal of these facilities stems from the ability of the entire family to accomplish more in one location than at a traditional mall. Parents and children can each head to a separate store or activity without multiple car trips. Parents may be less inclined to make a separate trip to the mall just so that their teens can shop. Thus, by restricting when teens can shop alone and requiring the presence of parents at all times, malls may lose both sets of consumers to competing multi-use developments in the end.

### **Minimum Deterrent Effect**

Curfews are rarely effective as a deterrent to either bad behavior or crime. A primary reason is that individuals who plan to break the law or to cause trouble of any nature usually fail to consider the consequences of their actions or lack concern for such consequences. These individuals believe that the potential benefit of their actions is greater than any potential risk. There will also be some youths who simply want to test the escort policy and security personnel to see how much they can get away with. For these teens, the desire to impress friends or defy authority will be much stronger than the risk of being caught and ejected from the mall.

Another barrier to the deterrent effect of curfew policies is the fact that they often do not apply to individuals whose behavior should be controlled. In the case of malls and teens, many of the individuals who would present a safety or security problem would be unaffected by an escort policy. Of the few malls that experienced incidents requiring the attention of security personnel or police in the past few years, the alleged perpetrators were often persons in their 20s who would not have been within the reach of an escort policy.

### **Inconvenience**

Actual implementation is another challenge facing parental escort policies. These policies can be very inconvenient for the general public and

impractical for shopping center owners to enforce. Escort policies work best when personnel are able to prevent youths from entering the mall past a certain hour, rather than having to patrol the mall and round up young people as they are encountered on the premises. Some mall owners have approached this task by stationing security personnel at each entrance to check identification for every person entering the mall who appears to be underage. This is a tremendous inconvenience to other shoppers however, especially those who owners would like to attract through use of an escort policy. Shoppers concerned that they will have to spend time waiting in a line to get into the mall, or that their shopping experience will be disrupted by a security staff member, may not make the trip to begin with. And because parental escort policies exist only in about 20 percent of shopping centers nationwide, the threat of such inconveniences provides a strong incentive to go to a competing facility that does not have such restrictions in place.

Other malls do not check identification at the door and rely instead on the eyes and ears of security personnel to watch for suspicious activity and individuals that might be in violation of the policy. Although this method avoids inconveniencing most shoppers, it can lead to claims of unfair scrutiny directed against particular teen groups. Although many legal experts have commented that parental escort policies likely do not violate fundamental constitutional rights per se, disparate enforcement of these policies could, if proven, form the basis of a successful constitutional challenge, even though the mall is privately owned.

Finally, escort policies can be inconvenient for parents. Most policies require an adult to be present with a teen at all times. Some parents may not object to driving their children to the mall, or being somewhere on premises while their children are there. But they may draw the line at escorting their child from store to store for the entire duration of their visit.

## **BEST PRACTICES CONSIDERATIONS •**

Successful parental escort policies share a number of common characteristics. A client should be advised to consider these practices before and during implementation of its particular policy.

### **Plan In Advance**

Early planning provides the best foundation for a parental escort policy. Some centers began working on their policies a year or more in advance of implementing them. It takes time to discuss the plan with various parties, decide how the plan will be put in place, and arrange for any additional resources necessary to carry it out. When shopping center companies receive negative publicity about parental escort policies, it is usually because the policy was put in place with little introduction or internal discussion ahead of time.

### **Involve The Community**

Although many mall owners do not want their facilities used as a loitering area or surrogate form of babysitter, shopping malls have traditionally served such social purposes. This view has been reinforced by the treatment the American mall has received in numerous popular movies and television shows. When informed of a parental escort policy, a common concern raised by parents and teens is that teenagers will no longer have anything to do or a safe place to go on their own. As such, the community—parents, teachers, religious and youth-oriented organizations, and teens themselves—should be involved in the discussion and implementation of a parental escort policy. When the local community is involved before the policy is in place, the response is often much more positive. Shopping center owners should schedule meetings with community groups to lay out the reasons why the curfew is needed and how they expect it to benefit the community at large as well as the shopping center itself.

Center owners should also think about partnering with local community organizations to provide alternate venues where teens can get together away from home and parents. They may also want to consider establishing or donating to a charitable fund that serves a particular community center or after-school program.

### **Consider Policy Parameters Carefully**

It is important not to overreach with a parental escort policy or be overaggressive in enforcement. Owners must think seriously about limiting the curfew to certain days, such as Friday and Saturday, when teens are more likely to be on their own. A policy that applies every night of the week may be too much (only one mall in the nation currently extends their curfew policy to weeknights as well as weekends). Youths age 16 and under are an ideal target for escort policies because these children are not yet able to drive and are most likely to be dropped off by parents. Policies that apply to youths between the ages of 18 and 21 are likely to cause problems for tenant employees themselves, who often fall into this age range. Furthermore, individuals in this bracket are more likely to be in college or working and coming to the mall to purchase the items they need for school or work.

Police involvement and legal action should be used only in the most extreme cases. If a crime has been committed or is about to be committed, security personnel should call police and be ready to act. But an underage child in a mall alone is a poor basis for a civil or criminal complaint. Having young people arrested for being unsupervised at the mall will lead to unwanted media attention and negative publicity. And legal action also brings increased costs in regard to court appearances and attorneys' fees. Severe punishments should be reserved for severe actions.

Finally, escort policies may need to be limited or postponed altogether during specific times of the year or for certain events. Owners should be cognizant of the calendar and build some level of flexibility into their policies.

### **Be Consistent About Enforcement**

Curfews, even when given a more politically correct name, carry loaded and negative perceptions. It is often assumed that they are aimed at particular groups of people and will not be enforced uniformly. One way to fuel resentment and negative public opinion is to fail to have a consistent enforcement policy. By limiting the discretion of security personnel, owners will reduce the chances of reinforcing negative feelings about the policy. When interviewed about escort policies at local malls, teens cited inconsistent enforcement as a problem. Some teens stated that if they were shopping, they were left alone. Others believed that the policy was only being enforced against them and not other individuals who did not look like them. However owners choose to implement a parental escort policy, they must be consistent about their enforcement and advise security personnel to act accordingly.

**CONCLUSION** • Parental escort policies have a legitimate purpose: They keep a space that is open to the public attractive to the public. But these policies can have uneven effects. They can, if not crafted properly, create too many inconveniences and disincentives for members of the public to visit the space. When there is a serious concern that leads to consideration of such a policy, there must also be a careful weighing of the pros and cons. No single policy will suit every community, and it is the attorney's responsibility to understand the history of the space, current trends, and the community.

## **PRACTICE CHECKLIST FOR Parental Escort Policies**

- Weigh the costs and benefits:
  - \_\_\_ Parental escort policies create the perception of a safe, clean, and friendly shopping environment for the general public. Therefore, a parental escort policy is one of the ways in which a shopping center owner can change public perception of a mall;
  - \_\_\_ Escort policies may raise conflicts between tenants and shopping center owners, because escort policies can require substantial increases in security personnel and added hours for employees who must monitor underage teens;
  - \_\_\_ The economic impact of parental escort policies remains unclear;
  - \_\_\_ Malls must compete with multi-purpose developments designed to serve several retail needs at once;
  - \_\_\_ Multi-purpose developments provide direct and fierce competition for consumers of every age group;
  - \_\_\_ Curfews in general are rarely effective as a deterrent to either bad behavior or crime;
  - \_\_\_ Parental escort policies can be very inconvenient for the general public and impractical for shopping center owners to enforce.
  
- Successful parental escort policies share a number of common characteristics:
  - \_\_\_ Early planning;
  - \_\_\_ Community involvement. When the local community is involved before the policy is in place, the response is often much more positive;
  - \_\_\_ Reasonableness. It is important not to overreach with a parental escort policy or be overaggressive in enforcement. Owners must think seriously about limiting the curfew to certain days, such as Friday and Saturday, when teens are more likely to be on their own. Police involvement and legal action should only be used in the most extreme cases;
  - \_\_\_ Consistent enforcement. Curfews, even when given a more politically correct name, carry loaded and negative perceptions. It is often assumed that they are aimed at particular groups of people and will not be enforced uniformly.

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