

ORDINANCE NO. 2017-09

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WYLIE, TEXAS, ESTABLISHING A CURFEW FOR MINORS IN THE CITY OF WYLIE; CREATING OFFENSES FOR MINORS, PARENTS, GUARDIANS OF MINORS AND BUSINESS ESTABLISHMENTS FOR VIOLATING CURFEW REGULATIONS; DEFINING TERMS AND PROVIDING FOR DEFENSES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR WAIVER OF JURISDICTION BY THE COURT WHEN REQUIRED UNDER THE TEXAS FAMILY CODE; PROVIDING FOR REVIEW OF THIS ORDINANCE; PROVIDING A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION THEREOF.

WHEREAS, the City Council of the City of Wylie, Texas (“City Council”) has investigated and determined that there is a continued presence of juvenile violence, juvenile gang activity and crime by persons under the age of seventeen (17) in the City of Wylie, Texas (“Wylie”); and

WHEREAS, the City Council has further investigated and determined that persons under the age of seventeen (17) are particularly susceptible by their lack of maturity and experience to participate in unlawful and gang-related activities and to be victims of older perpetrators of crime; and

WHEREAS, Wylie previously enacted Ordinance No. 2005-08 (“Curfew Ordinance”), under which citations have been issued to minors in violation of the Curfew Ordinance, and such Curfew Ordinance has expired; and

WHEREAS, the City Council, on behalf of Wylie and its citizens, has an obligation to provide for the protection of minors from each other and from other persons; for the enforcement of parental control over and responsibility for children; for the protection of the general public; and for the reduction of the incidence of juvenile criminal activities; and

WHEREAS, the City Council has further investigated and determined that its goals in enacting this Ordinance include, but are not limited to, the following: (1) reducing the number of juvenile crime victims; (2) reducing injury accidents involving juveniles; (3) reducing the time and resources required to address juvenile crime activities and accidents; (4) providing tools to address gang activity; (5) reducing juvenile peer pressure to stay out late; and (6) assisting parents in the control of their children; and

WHEREAS, the City Council has further investigated and determined that it is in the best interests of Wylie and its citizens to re-establish a curfew for those under the age of seventeen (17), as set forth below, which will promote public health, safety and general welfare; help attain the foregoing objectives; and diminish the undesirable impact of such conduct on the citizens of Wylie.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WYLIE, TEXAS:

SECTION 1: FINDINGS INCORPORATED. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: DEFINITIONS.

2.1 For the purposes of this Ordinance, when not inconsistent with the context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural, and the use of any gender shall be applicable to all genders whenever the sense requires. Words not defined in this Section shall be given their common and ordinary meaning.

2.2 For the purposes of this Ordinance, the following words, terms, phrases and their derivations shall have the meaning given in this Section 2.2:

(A) **CURFEW HOURS** means:

- (1) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday until 6:00 a.m. of the following day; and
- (2) 12:01 a.m. until 6:00 a.m. on any Friday or Saturday.

(B) **EMERGENCY** means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, an automobile accident or any situation requiring immediate action to prevent serious bodily injury or loss of life.

(C) **ESTABLISHMENT** means any privately-owned place of business operated for a profit to which the public is invited, including but not limited to, any place of amusement or entertainment.

(D) **GUARDIAN** means:

- (1) a person who, under court order, is the guardian of the person of a minor; or
- (2) a public or private agency with whom a minor has been placed by a court.

(E) **MINOR** means any person under seventeen (17) years of age.

(F) **OPERATOR** means any individual, firm, association, partnership or corporation operating, managing or conducting any establishment. The term includes the members or partners of an association or partnership and the officers and directors of a corporation.

(G) **PARENT** means a person who is:

- (1) a natural parent, adoptive parent or step-parent of another person; or
- (2) at least eighteen (18) years of age and authorized by a parent, guardian, court order, or by the court, or by a court-appointed guardian to have the care and custody of a minor.

(H) **PUBLIC PLACE** means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities and shops.

(I) **REMAIN** means to:

- (1) linger, stay, walk, run, stand, drive or ride; or
- (2) fail to leave premises when requested to do so by a police officer or the owner, operator or other person in control of the premises.

(J) **SERIOUS BODILY INJURY** means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

SECTION 3: OFFENSES.

3.1 A minor commits an offense if he remains in any public place or on the premises of any establishment within Wylie during curfew hours.

3.2 A parent or guardian of a minor commits an offense if he knowingly permits or by insufficient control allows the minor to remain in any public place or on the premises of any establishment within Wylie during curfew hours.

3.3 The owner, operator or any employee of an establishment commits an offense if he knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

SECTION 4: DEFENSES.

4.1 It is a defense to prosecution under Section 3 that the minor was:

- (A) accompanied by the minor's parent or guardian;
- (B) on an errand at the direction of the minor's parent or guardian, without any detour or stop;
- (C) in a motor vehicle involved in interstate travel;

- (D) engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
- (E) involved in an emergency;
- (F) on the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the police department about the minor's presence;
- (G) attending an official school, religious, or other recreational activity supervised by adults and sponsored by Wylie, the Wylie Independent School District, a civic organization or another similar entity that takes responsibility for the minor or going to or returning home from, without any detour or stop, an official school, religious or other recreational activity supervised by adults and sponsored by Wylie, a civic organization or another similar entity that takes responsibility for the minor;
- (H) exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech or the right of assembly; or
- (I) married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code, as amended.

4.2 It is a defense to prosecution under Subsection 3.3 that the owner, operator or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

SECTION 5: ENFORCEMENT. Before taking any enforcement action under this Section, a peace officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this Section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in Section 4 is present.

SECTION 6: PENALTIES.

6.1 Any person violating this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction therefore, shall be fined a sum not exceeding Five Hundred and No/100 Dollars (\$500.00). Each and every day that such violation continues shall be considered a separate offense. Wylie retains all legal rights and remedies available to it pursuant to local, state and federal law.

6.2 When required by Section 51.08 of the Texas Family Code, as amended, the court shall waive original jurisdiction over a person who violates Section 3 and shall refer the person to the appropriate court.

SECTION 7: REVIEW OF ORDINANCE. Before the third anniversary of the date of the adoption of this Ordinance, and every third year thereafter, the City Council shall:

- (A) review the effects of the Ordinance on the community and on problems the Ordinance was intended to remedy;
- (B) conduct at least two public hearings on the need to continue the Ordinance; and
- (C) abolish, continue or modify the Ordinance.

The failure of the City Council to act in accordance with this Section shall cause this Ordinance to expire without further action by the City Council.

SECTION 8: SAVINGS/REPEALING CLAUSE. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 9: SEVERABILITY. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 10: EFFECTIVE DATE. This Ordinance shall become effective from and after its adoption and publication as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF WYLIE, TEXAS on this 28th day of February, 2017.

Eric Hogue, Mayor

ATTEST:

Carole Ehrlich, City Secretary

Date of Publication: March 8, 2017 in the Wylie News