

TOWN OF LITTLE ELM, TEXAS

ORDINANCE NO. 1159

AN ORDINANCE ESTABLISHING A JUVENILE CURFEW WITHIN THE INCORPORATED TOWN LIMITS OF THE TOWN OF LITTLE ELM, DENTON COUNTY, TEXAS FROM 11:00 P.M. ON ANY SUNDAY, MONDAY, TUESDAY, WEDNESDAY, OR THURSDAY UNTIL 6:00 A.M. OF THE FOLLOWING DAY, FROM 12:01 A.M. UNTIL 6:00 A.M. ON ANY SATURDAY OR SUNDAY, AND 9:00 A.M. UNTIL 2:30 P.M. ON ANY MONDAY, TUESDAY, WEDNESDAY, THURSDAY, OR FRIDAY; PROVIDING DEFINITIONS; PROVIDING THAT IS AN OFFENSE FOR A MINOR TO REMAIN IN A PUBLIC PLACE OR ON THE PREMISES OF AN ESTABLISHMENT DURING CURFEW HOURS, AND PROVIDING THAT A PARENT OR GUARDIAN COMMITS AN OFFENSE FOR KNOWINGLY PERMITTING OR BY INSUFFICIENT CONTROL ALLOWING A MINOR TO REMAIN IN A PUBLIC PLACE OR ON THE PREMISES OF AN ESTABLISHMENT DURING CURFEW HOURS; PROVIDING DEFENSES; PROVIDING PROVISIONS REGARDING ENFORCEMENT OF THIS ORDINANCE; PROVIDING A PENALTY NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (\$500.00) FOR EACH OFFENSE, AND A SEPARATE OFFENSE IS DEEMED COMMITTED EACH DAY OR PART THEREOF DURING WHICH A VIOLATION OCCURS; PROVIDING AN EXPIRATION DATE OF THIS ORDINANCE UNLESS THE SAME IS EXTENDED OR EARLIER TERMINATED; A PUBLIC HEARING; PROVIDING A SAVING CLAUSE (EXCEPT THAT ORDINANCE NO. 962 OF THE TOWN IS REPEALED HEREBY); PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Little Elm, Texas ("Town") is a home rule city acting under its Charter, Article XI, Section 5 of the Texas Constitution, and applicable State law: and

WHEREAS, on July 7, 2009 the Town Council adopted Ordinance No. 962 regarding a curfew for minors, which ordinance will expire on the third anniversary of the date of its adoption unless continued by the Town Council in accordance with Section 370.002 of the Texas Local Government Code; and

WHEREAS, the said Section 370.002 provides that, in order to avoid the automatic expiration of a juvenile curfew ordinance, the governing body of a town must (i) review the ordinance's effects on the community and on problems the ordinance was intended to remedy, (ii) conduct public hearing on the need to continue the ordinance, and (iii) abolish, continue, or modify the ordinance: and

WHEREAS, in accordance with the said Section 370.002, the Town Council has reviewed the effects of Ordinance No. 962 on the community and on problems Ordinance No. 962 was intended to remedy, and has conducted a public hearing on the need to continue Ordinance No. 962; and

WHEREAS, the Town Council finds that persons under the age of seventeen are particularly susceptible by their lack of maturity and experience to participate in unlawful and gang-related activities and to victims of older perpetrators of crime; and

WHEREAS, the Town Council further finds that the Town has a strong and legitimate interest in the welfare of its young citizens, whose immaturity, inexperience, and lack of judgment may sometimes impair their ability to exercise their rights wisely; and

WHEREAS, the Town desires to provide for the protections of minors, for the protection of the general public, and for the reduction of the incidence of juvenile criminal activities: and

WHEREAS, a curfew for those under 17 years of old is in the interest of public health, safety, and general welfare, and will help to attain the objectives and purposes stated herein and to diminish the undesirable impact of such conduct on the citizens of the Town; and

WHEREAS, the Town Council desires, in lieu of continuing or modifying Ordinance No. 962, to repeal Ordinance No. 962 and to enact this Ordinance regarding juvenile curfew.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LITTLE ELM, TEXAS.

SECTION 1. PURPOSE

It is the express purpose of this Ordinance to (a) deter criminal conduct involving juveniles, (b) reduce the number of juvenile crime victims, (c) reduce injury from accidents involving juveniles, (d) reduce the additional time police officers are required to be in the field due to juvenile crime, (e) provide additional and more effective means and option for dealing with gang-related violence and crime, (f) reduce juvenile peer pressure to stay out late, (g) reduce juvenile peer pressure to participate in violent or criminal activities, and (h) assist parents in the control of their children.

SECTION 2. DEFINITION

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;
- (2) 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday; and
- (3) 9:00 a.m. until 2:30 p.m. on any Monday, Tuesday, Wednesday, Thursday or Friday; provided, however, the hours defined in this paragraph (3) shall not be considered as Curfew Hours for minors not subject to compulsory school attendance pursuant to the Texas Education Code, nor shall the hours defined in this paragraph (3) be considered as curfew hours on day or during period in which the school where the applicable minor is enrolled is closed or classes for which the applicable minor is enrolled have been canceled under the order and direction of officials authorized to issue such orders and directive.

Emergency means any unforeseen combination of circumstances or the resulting state that calls for immediate action. This term shall include, but not be limited to, a fire, natural disaster, automobile accidents or any situation requiring immediate action to prevent serious bodily injury or loss of life.

Establishment means any privately owned place of business operated for profit to which the public is invited, including, but not limited to, any place of amusement or entertainment.

Guardian means a person who, under court order, is the guardian of the person of a minor or a public or private agency with whom a minor has been placed by a court.

Minor means any person under seventeen (17) years of age.

Operator means any individual, firm, association, partnership, corporation, or other business entity operation, managing, or conducting any establishment. This term include, but is not limited to, the members or partners of an association or partnership and the officers of a corporation.

Parent means a person, who is a natural parent, adoptive parent, or stepparent of a minor, or a responsible adult or a person at least eighteen (18) years of age who is authorized by the parent or guardian of a minor to have the care and custody of such minor.

Police Department means the Little Elm Police Department.

Public Place mean any place to which the public or a substantial group of the public has access and shall include, but not limited to streets, highways and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, restaurants, theaters, game rooms, shops, shopping centers or any other place that offers for sale services or merchandise.

Remain means to linger or stay, or to fail to leave premises when required to do so by a police officer or the owner, operator or other person in control of the premises.

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

- (a) A minor commits an offense if the minor remains in or upon any public place or on the premises of any establishment within the Town during curfew hours.
- (b) A parent or guardian of a minor commits an offense if the parent or guardian knowingly permits, or by sufficient control allows the minor to remain in or upon any public place or on the premises of any establishment within the Town during curfew hours.
- (c) The owner, operator or any employee of an establishment commits an offense if the owner, operator, or employee knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

SECTION 4. DEFENSES

- (a) It shall be a defense to prosecution under Section 3 of this Ordinance that the minor was;
 - (1) Accompanied by the minor's parent or guardian;
 - (2) On a n errand at the direction of the minor's parent or guardian; without any detour or stop;
 - (3) In a motor vehicle involved in interstate travel;

- (4) Engaged in lawful employment activity, or going directly to the employment activity or returning directly to the minor's residence from the employment activity, without any detour or stop;
 - (5) Involved in an emergency;
 - (6) On an errand made necessary by an illness, injury, or emergency;
 - (7) On the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor of the minor's residence if the neighbor did not complain to the police department about the minor's presence thereon;
 - (8) Attending an official school, religious, or other recreational activity supervised by adults and sponsored by the Town, 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, any official school, religious, or other recreational activity supervised by adults and sponsored by the Town, a civic organization, or another similar entity that takes responsibility for the minor;
 - (9) Exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly;
 - (10) Married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code.
- (b) It is a defense to prosecution under Section 3 (c) 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.
- (c) It is a defense to the prosecution of a minor under Section 3 of this article that the minor has been directed by his or her parent or guardian to engage in a specific activity or to carry out expressed instructions during the time that the minor is actually engaged in fulfilling those directions or responsibilities.

SECTION 5. ENFORCEMENT

Before taking any enforcement action under this article, a police officer shall ask the apparent offender's age and reason for being in the public place or establishment. The officer shall not issue a citation or make an arrest under this Ordinance 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

- (a) A person who violates any provisions of this Ordinance shall be deemed guilty of a separate offense for each day or part of day during which the violation is committed, continued, or permitted and each offense, upon conviction, is punishable by fine not to exceed five hundred dollars (\$500.00).
- (b) When required by Section 51.08 of the Texas Family Code as amended, the municipal court shall waive original jurisdiction over a minor who violates Section 3 (a) of this Ordinance and shall refer the minor to juvenile court.

SECTION 7. EXPIRATION

This Ordinance expires on August 6, 2016, unless sooner terminated or extended by Town Council ordinance.

SECTION 8. INCORPORATION OF PREMISES

The above and foregoing premises and recitals to the Ordinance are true and correct and are incorporated herein and made a part hereof.

SECTION 9. SAVINGS

This Ordinance shall be cumulative of all other ordinances of the Town, and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinance are in direct conflict with the provisions of this Ordinance; provided, however, that Ordinance No. 962 of the Town is hereby repealed, but provided that any complaint, notice, action, proceeding, cause of action, or claim which prior to the effective date of this Ordinance has been initiated or has arisen under or pursuant to Ordinance No. 962 shall continue to be governed by the provisions of that Ordinance, and for that purpose Ordinance No. 962 shall be deemed to remain and shall continue in full force and effect.

SECTION 10. SEVERABILITY

The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the Town Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 11. EFFECTIVE DATE

This Ordinance shall take effect immediately upon its adoption and publication in accordance with and as provided by law and the Charter.

PASSED AND APPROVED by the Town Council of the Town of Little Elm, Texas, this 6th day of August 2013.

ATTEST:

Town Secretary

Mayor, Town of Little Elm, Texas

APPROVED AS TO FORM:

Town Attorney