

ORDINANCE NO. 2012-06-028

AN ORDINANCE OF THE CITY OF MCKINNEY, TEXAS, REPEALING ARTICLE VIII OF CHAPTER 70, "CURFEW HOURS FOR MINORS" IN ITS ENTIRETY AND ADOPTING A NEW ARTICLE VIII, CHAPTER 70, TO THE CITY OF MCKINNEY'S CODE OF ORDINANCES ENTITLED "CURFEW HOURS FOR MINORS;" ESTABLISHING A CURFEW BETWEEN THE HOURS OF 11:00 P.M. ON ANY SUNDAY, MONDAY, TUESDAY, WEDNESDAY, OR THURSDAY UNTIL 6:00 A.M. ON THE FOLLOWING DAY; AND 12:01 A.M. UNTIL 6:00 A.M. ON ANY SATURDAY OR SUNDAY FOR PERSONS UNDER SEVENTEEN (17) YEARS OF AGE; DEFINING TERMS; CREATING OFFENSES FOR MINORS, PARENTS AND GUARDIANS OF MINORS AND BUSINESS ESTABLISHMENTS VIOLATING CURFEW REGULATIONS; PROVIDING DEFENSES; PROVIDING FOR ENFORCEMENT BY THE POLICE DEPARTMENT; PROVIDING FOR WAIVER BY THE MUNICIPAL COURT OF JURISDICTION OVER A MINOR WHEN REQUIRED UNDER THE TEXAS FAMILY CODE; PROVIDING A PENALTY NOT TO EXCEED \$500.00; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, Section 370.002 of the Texas Local Government Code requires the review of a juvenile curfew ordinance every three years or the ordinance expires; and

WHEREAS, the former curfew ordinance expired on June 16, 2012; and

WHEREAS, the City of McKinney City Council has determined that the former curfew ordinance had its intended effect of reducing the problems the ordinance was intended to remedy, such as to decrease juvenile violence, juvenile gang activity, and crime by persons under the age of seventeen (17) years in the City of McKinney, Texas; and

WHEREAS, the City Council further recognizes that the Police Department includes arrest by citation (non-custodial arrests) in the statistics for Juvenile Detentions, which is a contributing factor to the dramatic increase in that category; and

WHEREAS, the category for Juvenile Detentions includes citations for the following offenses: curfew violations, minor in possession of alcohol and tobacco products, among others; and

WHEREAS, persons under the age of seventeen (17) years 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, the City of McKinney has an obligation to provide for the protection of minors, 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 determined that a curfew for those under the age of 17 years is in the best interest of the public health, safety, and general welfare and will help to attain the foregoing objectives and to diminish the undesirable impact of such conduct on the citizens of the City of McKinney.

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

Section 1. All of the above premises are hereby found to be true and correct and are approved and incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. Article VIII, of Chapter 70, "Curfew Hours for Minors", which expired by operation of law, is hereby repealed in its entirety and a new Article VIII of Chapter 70 entitled "Curfew Hours for Minors" of the City of McKinney Code of Ordinances is hereby established to hereinafter read as follows:

"ARTICLE X. CURFEW HOURS FOR MINORS

Sec. 70-201. Definitions. In this section:

- (a) **CURFEW HOURS** means between the hours of 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. on the following day; and 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday.
- (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 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, corporation or other legal entity operating, managing, or conducting any establishment. The term includes the members or partners of an association or partnership and the officers 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 or guardian to have the care and custody of a minor.
- (h) **POLICE DEPARTMENT** means the City of McKinney Police Department or any successor thereto.
- (i) **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, restaurants, theaters, game rooms, and shops, shopping centers or any other place that offers for sale services or merchandise.

- (j) **REMAIN** means to:
 - (1) linger or stay; or
 - (2) fail to leave premises when requested to do so by a police officer, the owner, operator, or other person in control of the premises.
- (k) **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.

Sec. 70-202. Offenses.

- (a) A minor commits an offense if he knowingly remains in any public place or on the premises of any establishment within the City during curfew hours.
- (b) 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 the City during curfew hours.
- (c) 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.

Sec. 70-203. Defenses.

- (a) It is a defense to prosecution under Section 70-202 that the minor was:
 - (1) accompanied by the minor's parent or guardian or accompanied by another adult approved by the parent or guardian;
 - (2) on an errand at the direction of the minor's parent or guardian, without any detour or stop;
 - (3) in a motor vehicle involved in intrastate or interstate travel or transportation through which passage through the curfew area is the most direct route;
 - (4) engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
 - (5) involved in an emergency;
 - (6) on an errand made necessary by an illness, injury or medical emergency;
 - (7) 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;
 - (8) attending an official school, religious, or other recreational activity supervised by adults and/or sponsored by the City of McKinney, 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 the City of McKinney, 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; or
 - (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 70-202(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.

Sec. 70-204. Enforcement.

Before taking any enforcement action under this section, a police officer shall ask the apparent offender's age and the 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 70-203 is present.

Sec. 70-205. Penalties.

- (a) A person who violates a provision of this Ordinance is guilty of a separate offense for each day or part of a day during which the violation is committed, continued or permitted. Each offense, upon conviction, is punishable by a fine not to exceed \$500.
- (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 70-202(a) of this Article and shall refer the minor to juvenile court.
- (c) In assessing punishment for either a parent or minor, municipal court judges are encouraged to consider a community service program."

Section 3. If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance or application thereto 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 despite such invalidity, which remaining portions shall remain in full force and effect.

Section 4. The fact that present Ordinances and regulations of the City of McKinney, Texas, are inadequate to properly safeguard the health, safety, peace and general welfare of the inhabitants of the City of McKinney, Texas, creates an emergency for the immediate preservation of public business, property, health, safety and general welfare of the public that requires that this Ordinance shall become effective from and after the date of its passage and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF
McKINNEY, TEXAS ON THE 19th DAY OF JUNE, 2012.

CITY OF McKINNEY, TEXAS

BRIAN LOUGHMILLER
Mayor

CORRECTLY ENROLLED:

SANDY HART, TRMC, MMC
City Secretary
BLANCA I. GARCIA
Assistant City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney