

As Recorded in Minute Book 1996-5 at pages 293-298.

**ORDINANCE NO. 2576
OF THE
CITY OF HATTIESBURG, MISSISSIPPI**

**AN ORDINANCE ESTABLISHING A NOCTURNAL
CURFEW APPLICABLE TO MINORS; DEFINING TERMS
AND OFFENSES FOR MINORS, PARENTS AND GUARDIANS
OF MINORS, AND FOR BUSINESS ESTABLISHMENTS VIOLATING
THE CURFEW ORDINANCE; PROVIDING DEFENSES TO, POLICE
ENFORCEMENT OF AND PENALTIES FOR VIOLATIONS; AND
ESTABLISHING A CURFEW APPLICABLE TO VIOLATIONS OF
THE MISSISSIPPI COMPULSORY ATTENDANCE LAW (§37-13-91, MISS.
CODE 1972 ANNOTATED); AND REPEALING ORDINANCE NO. 2508**

WHEREAS, the City Council of the City of Hattiesburg, Mississippi, has determined that there has been an increase in juvenile violence, juvenile gang activity, and crime by persons under the age of eighteen (18) in the City of Hattiesburg; and,

WHEREAS, persons under the age of eighteen (18) 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, in accordance with the prevailing community standards, this Ordinance serves to regulate the conduct of juveniles in public places and establishments during nocturnal hours, and those hours prohibited by the Mississippi Compulsory School Attendance Law, to be effectively and consistently enforced for the protection of the juveniles in Hattiesburg from each other and from other persons in public places and establishments during nocturnal hours, for the enforcement of parental control of, authority over and responsibility for their children, for the protection of the public from nocturnal mischief by juveniles, for the reduction in the instance of juvenile criminal activity, for the furtherance of family responsibility and for the public good, safety and welfare; and,

WHEREAS, the City of Hattiesburg has authority pursuant to Mississippi Code §21-17-5, 21-19-15 and 21-19-17 to enact this Ordinance; and,

WHEREAS, this Ordinance was originally enacted by the City Council of the City of Hattiesburg, Mississippi, and made effective January 1, 1995, containing therein a sunset provision for its expiration after December 31, 1996; and,

WHEREAS, the City Council of the City of Hattiesburg, Mississippi, finds and determines that the Ordinance has served as an invaluable tool to law enforcement; has had an invaluable impact on both crime statistics and truancy; and,

WHEREAS, the City Council of the City of Hattiesburg, Mississippi, finds that the Ordinance has proven to be effective for the purposes it has been enacted and should be extended and made permanent.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HATTIESBURG:

SECTION 1. This Ordinance shall be known as and may be cited as the "CURFEW ORDINANCE".

SECTION 2. Definitions. For the purpose of the Curfew Ordinance, the following terms, phrases, words and their derivations shall have the meanings given herein. When not in consistent with the context, words used in the present tense include the future, words in the plural number include the singular and words in the singular number include the plural. The word "*shall*" is also mandatory and not merely directory.

A. *CURFEW HOURS* means:

- (i) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday until 6:00 a.m. of the following day; and
- (ii) 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday.
- (iii) 9:00 a.m. until 2:00 p.m. on any Monday, Tuesday, Wednesday, Thursday or Friday during the school term in which a compulsory school-age child is to be enrolled in a public or private legitimate non-public school, as required by the Mississippi Compulsory School Attendance Law (§37-13-91, et. seq., Miss. Code Annotated). This curfew provision applies only to those minors to whom the Mississippi Compulsory School Attendance Law applies.

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

C. *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.

D. *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.

- E. *GUARDIAN* means:
- (i) a person who, under Court Order, is the guardian of the person of a minor;
or
 - (ii) a public or private agency with whom a minor has been placed by a Court.
- F. *MINOR* means a person under eighteen (18) years of age.
- G. *OPERATOR* means an individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes the members or parents of an association or partnership and the officers of a corporation.
- H. *PARENT* means a person who is:
- (i) a natural parent, adoptive parent; or
 - (ii) at least eighteen (18) years of age and authorized by a parent or guardian to have the care and custody of a minor.
- 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, and shops.
- J. *REMAIN* means:
- (i) linger or stay; or
 - (ii) 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.

SECTION 3. Offenses.

- (a) A minor commits an offense if he 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.

SECTION 4. Defenses.

- A. It is a defense to prosecution under SECTION 3(a) that the minor was:
- (i) accompanied by the minor's parent or guardian;
 - (ii) on an errand at the direction of the minor's parent or guardian, without any detour or stops;
 - (iii) with parental consent, in a motor vehicle engaged in bonafide interstate or intrastate travel through the City of Hattiesburg. This also exempts all interstate or intrastate travel beginning or ending in the City of Hattiesburg.
 - (iv) engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
 - (v) involved in an emergency;
 - (vi) 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;
 - (vii) attending an official school, religious or other recreational activity supervised by adults and sponsored by the City of Hattiesburg, 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 Hattiesburg, a civic organization or other similar entity that takes responsibility for the minor;
 - (viii) 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
 - (ix) married or had been married or had disability of minority removed by a Court of law; or
- 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.

SECTION 5. Enforcement. Before taking any enforcement action under this Section, a Police Officer shall ask the apparent offenders age and reason for being in the public place or establishment. 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 defenses in SECTION 4 is present.

SECTION 6. 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, continues, or permitted. Each offense, upon conviction, is punishable by a fine not to exceed Five Hundred Dollars (\$500.00).
- B. By discretion of the Municipal Court, the Municipal Court may waive original jurisdiction over a minor who violates SECTION 3(a) or a parent under SECTION 3(b) where the Youth Court of Forrest or Lamar County assumes jurisdiction in proceedings concerning a delinquent or neglected minor residing in the County under §43-21-151, Mississippi Code Annotated.

SECTION 7. Construction and Severability. Severability is intended through and within the provisions of the Curfew Ordinance. If any provision, including inter alia any exception, part, phrase or term of or the application thereof to any person or circumstances is held invalid, the application to other persons or circumstances shall not be affected thereby and the validity of the Curfew Ordinance in any and all other respects shall not be affected thereby. It is intended that the Curfew Ordinance be held inapplicable in such cases, if any, where its application would be unconstitutional. A constitutional construction is intended and shall be given. It is not the intent of this Ordinance to violate the Constitution of the State of Mississippi or the Constitution of the United States of America.

SECTION 8. Continuing Evaluation. Within, six (6) months, after the initial enforcement of this Ordinance and every six (6) months thereafter, the Chief of Police shall provide the City Council with a report and make recommendations concerning the effectiveness of and the continuing need for the Ordinance. The report shall specifically include the following information:

- (a) the particularity of enforcing the Ordinance and any problems with enforcement identified by the Police Department;
- (b) the impact of the Ordinance on crime statistics;
- (c) the number of persons successfully prosecuted for a violation of the Ordinance;

- (d) after receipt of the Police Chief's report by the City Council, it shall be placed on the City Council Agenda for discussion, review and continuing its evaluation.

SECTION 9. Effective Date. Upon passage, from and after January 1, 1997, in order to preserve and continue the public peace, safety and welfare.

SECTION 10. Repealer. Pursuant to the expiration date, Ordinance No. 2508 stands repealed as of December 31, 1996.

The above and foregoing Ordinance, after having been first reduced to writing and read was introduced by Councilman Buckley, seconded by Councilman Bowman, and was adopted by the following call vote:

<u>AYES</u>	<u>NAYS</u>
Cummings	None
Holloway	
Buckley	
Bowman	
Lawrence	

WHEREUPON, the President declared the motion carried and the Ordinance adopted, this the 17th day of December, 1996.


(SEAL)

ATTEST:



 CLERK OF THE COUNCIL

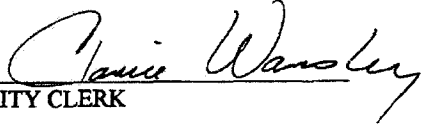
ADOPTED:

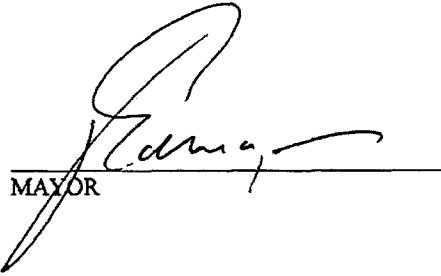


 PRESIDENT OF CITY COUNCIL

The above and foregoing Ordinance submitted to and approved by the Mayor, this the
17th day of December, 1996.

ATTEST:


CITY CLERK


MAYOR