

**TOWN OF HICKORY CREEK
ORDINANCE NO. 2020-06-852**

AN ORDINANCE OF THE TOWN OF HICKORY CREEK, TEXAS, CONTINUING THE JUVENILE CURFEW FOR MINORS UNDER 17 YEARS OF AGE ADOPTED BY ORDINANCE NO. 2008-02-609; PROHIBITING APPEARANCE IN PUBLIC BETWEEN THE HOURS OF 11:00 P.M. ON ANY SUNDAY, MONDAY, TUESDAY, WEDNESDAY, OR THURSDAY UNTIL 6:00 A.M. OF THE FOLLOWING DAY; AND 12:01 A.M. UNTIL 6:00 A.M. ON ANY SATURDAY OR SUNDAY OR TOWN HOLIDAY WITHIN THE TOWN LIMITS OF HICKORY CREEK; PROVIDING FOR FINDINGS; PROVIDING FOR DEFINITIONS; PROVIDING FOR OFFENSES; PROVIDING FOR DEFENSES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR A PENALTY CLAUSE; PROVIDING FOR PUBLICATION; PROVIDING FOR A CUMULATIVE REPEALER CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Hickory Creek, Texas desires to continue regulating the hours an unsupervised minor under 17 years of age may appear in public without undue infringement on their liberty;

WHEREAS, Section 370.002 of the Texas Local Government Code requires that such an ordinance be reexamined before the third anniversary of the date of adoption of a juvenile curfew ordinance and every third year thereafter, to determine whether such provisions should be continued in effect, modified or abolished;

WHEREAS, the Town Council of the Town of Hickory Creek, Texas recognizes the danger to the safety and security of unsupervised minors during certain hours of a day;

WHEREAS, the Town Council of the Town of Hickory Creek, Texas, recognizes that although dangerous, certain circumstances may exist that would necessitate a minor being in a public place due to an unforeseen combination of circumstances or an emergency;

WHEREAS, the Town Council of the Town of Hickory Creek, Texas, has conducted public hearings on the need to continue in effect within the Town of Hickory Creek juvenile curfew ordinance; and

WHEREAS, the Town Council of the Town of Hickory Creek, Texas, now finds and determines that the current juvenile curfew ordinance provisions in effect within the Town should be continued in effect with the modifications contained herein.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HICKORY CREEK, TEXAS, THAT:

Section I

Findings

That the above stated findings and recitals contained in the preamble of this ordinance are determined to be true and correct and are hereby adopted as part of this ordinance.

Section II **Definitions**

In this ordinance, the following definitions shall be used:

Curfew Hours: means 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. of the following day; and 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday or Town Holiday.

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.

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.

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.

Parent: means a person who is a natural parent, adoptive parent, or stepparent of another person or at least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.

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 of a corporation.

Minor: means any person younger than 17 years of age.

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, the common areas of schools, the common areas of greenbelts in housing developments, hospitals, apartment houses, office buildings, transport facilities and shops.

Remain: means to linger, loiter, stay, or 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.

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.

Town Holiday: means a day on which the Town of Hickory Creek observes a paid holiday for its employees.

Section III **Offenses**

- (1) A minor commits an offense if he or she remains in any public place or on the premises of any establishment within the Town limits during curfew hours.
- (2) A parent or guardian of a minor commits an offense if he or she knowingly permits, or by insufficient control, allows the minor to remain in any public place or on the premises of any establishment within the town limits during curfew hours.
- (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 in the town limits during curfew hours.

Section IV **Defenses**

- (1) It is a defense to prosecution under Section III 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 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, an official school, religious, or other recreational activity supervised by adults and sponsored by the Town, a civic organization, or other 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, and the right of assembly;

- (i) Married or has been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family code; or
 - (j) Accompanied by an adult designated by his or her parent or guardian.
- (2) It is a defense to prosecution of an owner, operator, or employee under Section III, 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 V **Enforcement**

- (1) 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. The officer shall not issue a citation or make an arrest under this article unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense set forth in Section IV is present.

Section VI **Penalties**

- (1) A person who violates a provision of this Article 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 five hundred dollars (\$500.00) and a separate offense shall be deemed committed upon each day during or on which a violation occurs and continues.
- (2) If the governing body of the Town of Hickory Creek determines that a violation of this Ordinance has occurred, the Town of Hickory Creek may bring suit in district court to enjoin the person, firm, partnership, corporation, or association from engaging in the prohibited activity.
- (3) 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 III of this ordinance and shall refer the minor to juvenile court.

Section VII **Publication Clause**

The Town Secretary of the Town of Hickory Creek is hereby directed to publish in the Official newspaper of the Town of Hickory Creek, the Caption and Effective Date clause of this Ordinance as required by Section 52.011 of the Texas Local Government Code.

Section VIII
Cumulative Repealer

This Ordinance shall be cumulative of all provisions of the ordinances of the Town of Hickory Creek, Texas, except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

Section IX
Severability

It is hereby declared to be the intention of the Town Council of the Town of Hickory Creek that the phases, clauses, sentences, paragraphs, or section of this Ordinance should be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phases, clauses, sentences, paragraphs, or sections of this Ordinance, since the same would have been enacted by the Town Council without incorporation of this Ordinance of any such unconstitutional phase, clause, sentence, paragraph, or section.

Section X
Engrossment and Enrollment

The Town Secretary of the Town of Hickory Creek is hereby directed to engross and enroll this Ordinance by copying the Exact Caption and Effective date clause in the minutes of the Town Council of the Town of Hickory Creek and by filing this Ordinance in the Ordinance records of the Town.

Section XI
Effective Date

This Ordinance shall be in full force and effect from and after its date of passage and publication.

AND IT IS SO ORDAINED.

PASSED AND APPROVED by the Town Council of the Town of Hickory Creek, Texas,
this the 22nd day of June, 2020.

Lynn C. Clark, Mayor
Town of Hickory Creek, Texas

ATTEST:

Kristi K. Rogers, Town Secretary
Town of Hickory Creek, Texas

APPROVED AS TO FORM:

Dorwin L. Sargent, III, Town Attorney
Town of Hickory Creek