

**ORDINANCE NO. 1012-4**

**An Ordinance of the City Council of the City of Pearland, Texas, establishing a curfew for persons under the age of 17 years, providing defenses to prosecution for violations hereunder, providing a penalty for violation; providing for timely review and analysis of said ordinance to determine its effectiveness; containing a savings clause, a severability clause and a repealer clause; providing an effective date, and containing other provisions relating to the subject.**

**WHEREAS**, the City Council has determined that there has been an increase in juvenile violence, juvenile gang activity, and crime committed by persons under the age of 17 years in the City of Pearland; and

**WHEREAS**, the City Council has discovered the migration of gang activity to the City of Pearland from surrounding cities and communities where curfew ordinances have been implemented and enforced; and

**WHEREAS**, due to their lack of maturity and experience, persons under the age of 17 years are particularly susceptible to participate in unlawful and gang-related activities and to be victims of older perpetrators of crime; and

**WHEREAS**, the City of Pearland has an obligation to provide for the protection of minors from each other and from other persons, for the enforcement of parental control over the responsibility for children, for the protection of the general public, and for the reduction of the incidence of juvenile violence and criminal activity; and

**WHEREAS**, a curfew applicable to persons under the age of 17 will be in the interest of public health, safety, and general welfare, and will diminish the undesirable impact of such conduct on the citizens of the City of Pearland; now, therefore,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PEARLAND, TEXAS:**

I.

The facts and matters set forth in the preamble of this ordinance are hereby found to be true

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and correct.

### **II.**

#### **PURPOSE.**

It is the express purpose of this ordinance to: (1) deter criminal conduct involving juveniles; (2) curtail migration of gang activity from surrounding cities and communities; (3) reduce the number of juvenile crime victims; (4) reduce injury from accidents involving juveniles; (5) provide additional and more effective means for dealing with gang-related violence and crime; and (6) reduce juvenile peer pressure to participate in violent or criminal activities.

### **III.**

#### **DEFINITIONS.**

For the purpose of this ordinance, the following words or terms shall have the meanings ascribed to them in this section unless the context of their usage clearly indicates another meaning:

A. City shall mean the City of Pearland, Texas.

B. Curfew Hours shall mean:

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 subject to compulsory school attendance pursuant to 21.032, Texas Education Code, nor shall the hours defined in this paragraph (3) be considered as Curfew Hours on days or during periods in which the school, where the applicable minor is enrolled, is closed or classes in which the applicable minor is enrolled have been canceled under the order and direction of officials authorized to issue such orders and directives, nor shall the hours defined in this paragraph (3) be considered as Curfew Hours on days or during periods in which applicable minor is not required by law to be in attendance at school.

C. Emergency shall mean any unforeseen combination of circumstances or the resulting state that calls for immediate action. This term shall include, but is not limited to, a fire, natural

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disaster, automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

- D. Establishment shall mean 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 within the City.
- E. Guardian shall mean a person who, under court order, is the guardian of the person of a minor; or public or private agency with whom a minor has been placed by a court.
- F. Minor shall mean any person under 17 years of age.
- G. Operator shall mean 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.
- H. Parent shall mean a person who is a natural parent, adoptive parent, or step-parent of a minor, a responsible adult, or a person at least 18 years of age who is authorized by the parent or guardian of a minor to have the care and custody of such minor.
- I. Police Department shall mean the Pearland Police Department or any successor police department of the City of Pearland.
- J. Public Place shall mean any place to which the public or a substantial group of the public has access and shall include, but is 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.
- K. Remain shall mean to linger or 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.
- L. Serious Bodily Injury shall mean 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.

### IV.

## **OFFENSES.**

- A. It shall be unlawful for any minor to knowingly remain, walk, run, stand, or operate or ride about in any motor vehicle or bicycle, in or upon any public place or on the premises of any establishment within the City during Curfew Hours.

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- B. It shall be unlawful for the parent or guardian of a minor to knowingly permit, or, by insufficient control, allow a minor to remain in or upon any public place or on the premises of any establishment within the City during Curfew Hours.
- C. It shall be unlawful for the owner, operator, or any employee of an establishment within the City to knowingly allow a minor to remain upon the premises of the establishment during Curfew Hours.

V.

**DEFENSES.**

- A. It shall be a defense to prosecution under Section IV. of this ordinance that the minor was:
1. accompanied by the minor's parent or guardian;
  2. accompanied by an adult designated by the parent or guardian to supervise the minor;
  3. on an errand at the direction of the minor's parent or guardian, without any detour or stop;
  4. in a motor vehicle involved in interstate travel;
  5. 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;
  6. involved in an emergency;
  7. on an errand made necessary by an illness, injury, or emergency;
  8. on the sidewalk abutting the minor's permanent residence or abutting the residence of a next door neighbor of the minor's permanent residence if the neighbor did not complain to the Police Department about the minor's presence thereon.
  9. attending an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Pearland, 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 Pearland, a civic organization, or another similar entity that takes responsibility for the minor;

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10. engaged, participating in, or traveling to or from any event, function, or activity for which the application of Section IV of this ordinance would contravene the minor's rights protected by the United States Constitution including but not limited to, First Amendment rights, such as the free exercise of religion, freedom of speech, or the right of assembly; or
  11. 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 IV (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 the minor refused to leave.
- C. It is a defense to prosecution under Section IV. of this ordinance 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.

VI.

**ENFORCEMENT.**

Before taking any enforcement action under this ordinance, 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, Section V is present.

VII.

**PENALTIES.**

- A. A person who violates any provision of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$500.00. Each day of violation shall constitute a separate offense.

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- 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 IV (A) of this ordinance and shall refer the minor to juvenile court.

VIII.

The provisions of this ordinance are supplemental and shall be cumulative with all other laws and ordinances applicable in any manner to juveniles.

IX.

All ordinances and parts of ordinances in conflict herewith are hereby repealed, but only to the extent of such conflict.

X.

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

XI.

It is the intent of the City Council of the City of Pearland, Texas, that this ordinance shall be codified in the City's official Code of Ordinances, and the sections of this ordinance may be renumbered to accomplish such intention.

XII.

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The City Secretary shall cause this ordinance, or its caption and penalty, to be published in the official newspaper of the City of Pearland, upon passage of such ordinance. The ordinance shall then become effective ten (10) days from and after its publication, or the publication of its caption and penalty, in the official City newspaper.

PASSED and APPROVED ON FIRST READING this the 8<sup>th</sup> day of November, A. D., 2021.

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J. KEVIN COLE  
MAYOR

ATTEST:

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CRYSTAL ROAN, TRMC, CMC  
CITY SECRETARY

PASSED and APPROVED ON SECOND AND FINAL READING this the 22<sup>nd</sup> day of November, A. D., 2021.

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J. KEVIN COLE  
MAYOR

ATTEST:

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CRYSTAL ROAN, TRMC, CMC  
CITY SECRETARY

APPROVED AS TO FORM:

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DARRIN M. COKER  
CITY ATTORNEY