

ORDINANCE NO. 10-09-27-1

AN ORDINANCE OF THE CITY OF MINEOLA, TEXAS PROVIDING FOR A JUVENILE CURFEW; PROVIDING FOR DEFINITIONS; OFFENSES; PENALTIES; DEFENSES; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Mineola, Texas, pursuant to Texas Local Government Code Section 341.905, and in furtherance of the health, safety, and general welfare of its citizens, finds it necessary to enact a juvenile curfew;

WHEREAS, the City Council for the City of Mineola, Texas finds that such a curfew would deter criminal conduct involving juveniles, reduce the number of juvenile crime victims, reduce injury from accidents involving juveniles, provide a more effective means of dealing with juvenile violence and crime, and reduce juvenile peer pressure to participate in criminal activities.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Mineola, Texas:

I. Definitions. For the purpose of this article, the following words or terms shall have the meaning described to them in this section unless the context of their usage clearly indicates another meaning:

(a) “City” shall mean the City of Mineola, Texas.

(b) “Curfew Hours” shall mean:

- (i) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. of the following day;
- (ii) 12:01 a.m. until 6:00 a.m. on any Friday or Saturday.

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

(d) “Establishment” shall mean any business or 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 and 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 the Minor to have the care and custody of such Minor.

(i) **“Police Department”** shall mean the Mineola Police Department.

(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, the common areas of schools, hospitals, apartment houses, office buildings, restaurants, game rooms, shops, shopping centers, or any other place that offers or sells services or merchandise.

(k) **“Remain”** shall mean to linger, 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.

II. 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.

(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.

III. Defenses.

(a) It shall be a defense to prosecution under this Ordinance that the minor was:

- (i) accompanied by the minor's parent or guardian;
- (ii) accompanied by an adult designated by the parent or guardian to supervise the minor;
- (iii) on an errand at the direction of the minor's parent or guardian without any detour or stop;
- (iv) in a motor vehicle involved in interstate travel;
- (v) 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;
- (vi) involved in an emergency;
- (vii) on an errand made necessary by an illness, injury, or emergency;
- (viii) 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 neighbors do not complain to the police department about the minor's presence thereon;
- (ix) attending an official school, religious, or other recreational activity supervised by adults or sponsored by the City of Mineola, 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;
- (x) engaged, participating in, or traveling to or from any event, function or activity for which the application 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
- (xi) married or have been married, or had disabilities of minority removed in accordance with the Texas Family Code.

(b) It is a defense to prosecution under this Ordinance that the owner, operator, or employee of establishment promptly notified by 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 this Ordinance that a minor has been directed by his/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.

IV. 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, no defense pursuant to this Ordinance is present.

V. 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.

(b) When required by Texas Family Code Section 51.08, as amended, the municipal court shall waive original jurisdiction over a minor who violates this Ordinance, and shall refer the minor to juvenile court.

VI. Supplemental and Cumulative Provisions. Provisions of this article are supplemental and shall be cumulative with all other laws and ordinances applicable in any manner to juveniles.

VII. Repealer. All Ordinances or portions thereof in conflict with the provisions of this Ordinance, to the extent of such conflict, are hereby repealed, but only to the extent of such conflict.

VIII. Severability. If any word, sentence, clause, paragraph, or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such portions shall be deemed a separate, distinct, and independent provision, and such holding shall not effect validity of remaining portions thereof.

IX. Effective Date. This Ordinance shall take effect after being passed and approved by the City Council of the City of Mineola, Texas and published as required by law.

Duly PASSED and APPROVED by the City Council of the City of Mineola, Texas on this 27 day of September, 2010.