

ORDINANCE

AN ORDINANCE AMENDING ARTICLE IV "CURFEW" OF CHAPTER 54 "MISCELLANEOUS OFFENSES" OF THE CODE OF ORDINANCES, CITY OF BURLESON, TEXAS MAKING IT AN OFFENSE FOR MINORS, PARENTS AND GUARDIANS OF MINORS, AND BUSINESS ESTABLISHMENTS TO VIOLATE 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; INCORPORATING THE RECITALS INTO THE BODY OF THE ORDINANCE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING FOR AN EFFECTIVE DATE AND PUBLICATION; AND PROVIDING FOR PENALTIES.

WHEREAS, the City of Burleson, Texas, is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, on April 12, 2001, the City Council of the City of Burleson adopted Ordinance B-662, codified in Article IV of Chapter 54 of the City of Burleson Code of Ordinances, providing for a juvenile curfew; and

WHEREAS, pursuant to Section 370.002 of the Texas Local Government Code, before the third anniversary of the date of adoption of a juvenile curfew ordinance, and every third year thereafter, the governing body of the home-rule municipality is required to "review the ordinance's effects on the community and on the problems the ordinance was intended to remedy, conduct public hearings on the need to continue, abolish, or modify the ordinance"; and

WHEREAS, the City Council last reviewed Ordinance No. B-662 on March 21, 2016; and

WHEREAS, on September 16, 2019, and October 7, 2019, the City Council reviewed information provided by the Burleson Police Department regarding citations and curfew cases; and

WHEREAS, on September 16, 2019, the City Council held a public hearing on the curfew ordinance and heard all persons desiring to speak on the matter; and

WHEREAS, the City Council finds juvenile curfew ordinance also encourages parents to take responsibility for the whereabouts of their minor children; and

WHEREAS, the City Council desires to provide for the protection of minors and for the enforcement of parental control; and

WHEREAS, the City Council reviewed the ordinance's effects on the community and the problems the ordinance is intended to remedy; and

WHEREAS, the City Council deems it necessary and proper and in the best interests of the public health, safety, and general welfare to continue a curfew for persons under 17 years of age.

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

Section 1.

Article IV of Chapter 54 of the Code of Ordinances, City of Burleson, Texas, is hereby amended to read as follows:

"ARTICLE IV. CURFEW

Sec. 54-111. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Curfew hours means:

- (1) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday night until 6:00 a.m. on the following day; and
- (2) 11:59 p.m. on any Friday or Saturday night until 6:00 a.m. on the following day.

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, natural disaster, 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:

- (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.

Minor means any person under 17 years of age.

Officer means a police officer of the city.

Operator means any individual, firm, association, partnership, or corporation operating, managing, or conducting business at any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.

Parent means a person who is:

- (1) A natural parent, adoptive parent, or step-parent of another person; or
- (2) At least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.

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, parks and the common areas and parking lots of schools, hospitals, apartment houses, office buildings, transportation facilities, commercial shopping centers, and shops.

Remain means to:

- (1) Linger or stay; or
- (2) Fail to leave premises when requested to do so by an 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.

Sec. 54-112. - Offenses.

- (a) A minor commits an offense if the minor 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 the parent or guardian 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 the owner, operator, or employee knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

Sec. 54-113. - Defenses.

- (a) It is a defense to prosecution under section 54-112 that the minor was:
 - (1) Accompanied by the minor's 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 interstate travel;
 - (4) Engaged in, going to, or returning home from an employment activity, without any detour or stop;
 - (5) Involved in an emergency;
 - (6) 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;

- (7) Attending, 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, a civic organization, a school district or another similar entity that takes responsibility for the minor;
 - (8) 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
 - (9) Married or had been married or had disabilities of minority removed in accordance with V.T.C.A., Family Code ch. 31.
- (b) It is a defense to prosecution under section 54-112(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. 54-114. - Enforcement of article provisions.

Before taking any enforcement action under this section, an 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 section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in section 54-113 is present.

Sec. 54-115. - Penalties for violation of article.

- (a) 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 \$500.00.
- (b) When required by V.T.C.A., Family Code § 51.08, as amended, the municipal court shall waive original jurisdiction over a minor who violates section 54-112(a) and shall refer the minor to juvenile court."

Section 2.

The findings set forth above in the recitals of this Ordinance are incorporated into the body of this Ordinance as if fully set forth herein.

Section 3.

That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 4.

Any complaint, notice, notice of violation, action, cause of action, hearing request, appeal, or claim which prior to the effective date of this Ordinance that has been initiated or arisen under or pursuant to Ordinance No. B-622 or any other ordinance(s) shall continue to be governed by the provision of that ordinance or ordinances, and for that purpose that ordinance or ordinances shall be deemed to remain and shall continue in full force and effect.

Section 5.

That the terms and provisions of this ordinance shall be deemed to be severable and that if any section, subsection, sentence, clause, or phrase of this ordinance shall be declared to be invalid or unconstitutional, the same shall not affect the validity of any other section, subsection, sentence, clause, or phrase of this ordinance and the remainder of such ordinance shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part hereof.

Section 6.

That it is the intention of the City Council and is hereby ordained that the provisions of this ordinance shall become a part of the Code of Ordinances of the City of Burleson, and that the sections of this ordinance may be renumbered or relettered to accomplish such intention.

Section 7.

That it is hereby officially found and determined that the meeting at which this ordinance is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

Section 8.

This Ordinance shall become effective immediately upon its passage and publication as required by law.

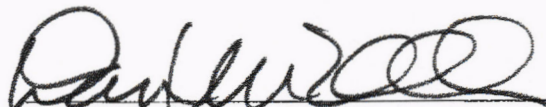
Section 9.

That a violation of this ordinance shall be a Class C misdemeanor and the penalty for violating this ordinance shall be as provided for in Section 54-115 of the Code of Ordinances of the City of Burleson which shall be a fine not exceeding \$500.00, and each day a violation exists shall be a separate offense.

PASSED AND APPROVED:

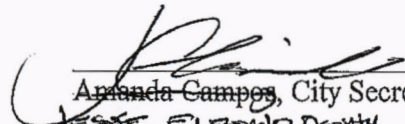
First Reading: the 16 day of September, 20 19.

Final Reading: the 7 day of October, 20 19.



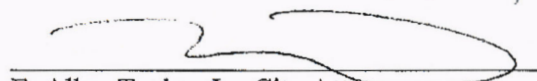
Ken Shetter, Mayor Pro Tem
City of Burleson, Texas
Dan McLendon,

ATTEST:


Amanda Campos, City Secretary
JESSE EURENO, Deputy



APPROVED AS TO FORM & LEGALITY:


E. Allen Taylor, Jr., City Attorney
BY: MATT RIBITZKI
DEPUTY CITY ATTORNEY