

**ORDINANCE #G-1-21**

AN ORDINANCE OF THE CITY OF PORT LAVACA, TEXAS ESTABLISHING A JUVENILE CURFEW WITHIN THE CORPORATE LIMITS OF THE CITY OF PORT LAVACA; ALSO DESCRIBED IN THE CODE OF ORDINANCES AS CHAPTER 30, OFFENSES, ARTICLE II, JUVENILE CURFEW; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; DECLARING CERTAIN CONDUCT TO BE UNLAWFUL AND PROVIDING PENALTIES THEREFORE; PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council wishes to prevent the increase in juvenile violence, juvenile gang activity and an increase in crime by persons under age of seventeen (17) in the City of Port Lavaca; and

WHEREAS, persons under the age of seventeen (17) 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, the City of Port Lavaca has an obligation to provide for the protection of minors from each other and from other persons, for the enforcement of parental control of and responsibility for their children, for the protection of the general public, and for the reduction of the incidence of juvenile criminal activities; and

WHEREAS, a curfew for those under seventeen years of age will be in the interest of the public health, safety, and general welfare, and will help to attain the foregoing objectives and to diminish the undesirable impact of such conduct on the citizens of the City of Port Lavaca:

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

**SECTION I.**

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**

The following words, terms and phrases when used in this article shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

1. Emergency - shall mean an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term shall include but not be limited to a fire, natural disaster, vehicular accident, or a serious medical condition of sudden onset.

2. Guardian - shall mean the person who, under a court order, is the guardian of the person of a minor or the public or private agency with whom a minor has been placed by a court.

3. Minor - shall mean any person less than seventeen (17) years of age.

4. Parent - shall mean the natural mother or father or adoptive mother or father, or stepmother or stepfather of a minor.

5. 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, apartments, houses, office buildings, transport facilities, and shops.

### SECTION III. OFFENSES

(a) It shall be unlawful for any minor to knowingly remain, walk, run, stand, drive or ride about, in or upon any public place in the City of Port Lavaca Texas, between the hours of 12:00 o'clock midnight and 6:00 o'clock a.m. on any day of the week, or between the hours of 8:00 o'clock a.m. and 3:00 o'clock p.m. on a Monday, Tuesday, Wednesday, Thursday or Friday.

(b) It shall be unlawful for the parent or guardian having legal custody of a minor to knowingly allow or permit the minor to be in violation of the curfew imposed in Section III (a) of this code.

(c) Violations of this section shall be punishable as provided in Section VII of this code.

### SECTION IV. DEFENSES

It is a defense to prosecution under Section III of this code that:

(a) The minor was accompanied by his or her parent or guardian;

(b) The minor was accompanied by an adult designated by his or her parent or guardian;

(c) The minor was on an errand made necessary by an emergency;

(d) The minor was attending a school, religious, or government-sponsored activity or was traveling to or from a school, religious, or government activity or was going directly to or coming from lawful employment;

(e) The minor was engaged in a lawful employment activity or was going directly to or coming from lawful employment;

- (f) The minor was on the sidewalk of the place where he or she resides;
- (g) The minor was on an errand directed by his or her parent or guardian;
- (h) The minor was in a motor vehicle involved in intrastate or interstate transportation;
- (i) The minor was engaged in, participating in, or traveling to or from any event, function or activity for which the application of section III of this code would contravene his or her rights protected by the Texas or United States Constitutions;
- (j) The minor was married or had been married or had disabilities of minority removed in accordance with chapter 31 of the Texas Family Code; or
- (k) The Minor is able to furnish acceptable proof that he/she is being home schooled, or attending a private school, and has registered with the public school system as such.
- (l) With respect to hours between 8:00 o'clock a.m. and 3:00 o'clock p.m. only, that the offense occurred during the summer vacation break period of the school in which the minor is enrolled or on a holiday observed by the closure of classes in the school in which the minor is enrolled or that the minor has graduated from high school or received a high school equivalence certificate.

#### SECTION V. SUPPLEMENTAL EFFECT

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

#### SECTION VI. ENFORCEMENT

Notwithstanding the penal effect of this article the chief of police may develop alternative enforcement strategies, which can include, but need not be limited to, return of minors to their residences or schools, counseling with minors and their parents or guardians, the issuance of warning citations to minors or their parents or guardians, or the referral of instances that appear to also involve the violation of school attendance laws to those officers who are responsible for the enforcement of those laws. The enforcement strategies shall be promulgated in writing to members of the police department so that this article may be enforced in a uniform manner.

#### SECTION VII. PENALTIES

Any person violating any of the provisions of this ordinance shall be charged with a Class C Misdemeanor Offense and upon conviction thereof shall be fined in any sum not to exceed Five Hundred (\$500.00) Dollars.

A third arrest of a minor within a period of twelve (12) months for violating any of the provisions of this ordinance, shall be deemed *prima facie evidence* that a parent or guardian, having legal custody of said minor, knowingly allowed or permitted the minor to be in violation of the curfew imposed in section III (a) of this code.

#### SECTION VIII. COMMUNITY SERVICE

~~————(a) A Court may require a defendant to serve all or a part of a sentence as a condition of probation by performing community service rather than paying a fine or being confined in jail.~~

~~————(b) In its order requiring a defendant to participate in community service work, the Court must specify:~~

~~————(1) the number of hours the defendant is required to work; and~~

~~————(2) the entity or organization for which the defendant is required to work; and~~

~~————(c) The Court may order the defendant to perform community service work under this article only for a government entity or a non-profit organization that provides services to the general public that enhance social welfare and the general wellbeing of the community. A governmental entity or non-profit organization that accepts a defendant to perform community service must agree to supervise the Defendant in the performance of the Defendant's work and shall report on the defendant's work to the Municipal Court of the City of Port Lavaca.~~

~~————(d) It is the intent of this code that Community Service be implemented in lieu of a fine or jail sentencing when possible.~~

~~————(e) It is also the intent of this code that the parent or guardian having legal custody of a minor and who is also in violation of this code shall serve Community Service with that minor when so ordered by the court as a condition of probation.~~

#### SECTION IX. VIII. SEVERABILITY

If any provisions, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected; thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

SECTION ~~X~~. IX. REPORTING

Six months from the effective date hereof, the Chief of Police shall submit a report to the City Council on the effectiveness of this Ordinance, unforeseen problems in enforcement, and any suggestions for changes or additions which might be made in light of the City's experience.

SECTION ~~XI~~. X. EFFECTIVE DATE

This ordinance shall become effective upon its adoption

FIRST READING this the 8<sup>th</sup> day of February, 2021.

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Jack Whitlow, Mayor

SECOND READING this the 8<sup>th</sup> day of March, 2021.

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Jack Whitlow, Mayor

PASSED AND APPROVED this the 8<sup>th</sup> day of March, 2021.

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Jack Whitlow, Mayor

ATTEST:

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Mandy Grant, City Secretary

APPROVED AS TO FORM AND CONTENT:

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Anne Marie Odefey, City Attorney

RECORD OF VOTE

	FIRST READING	SECOND READING	APPROVED/ ADOPTED
Councilman Smith	Aye		
Councilman Dent	Aye		
Councilman Tippit	Aye		
Councilwoman Padron	Aye		
Councilman Ward	Aye		
Councilman Barr	Aye		

Record of approval by City Council: City Council Minute Records, Volume 3G, Page \_\_\_\_\_.