

ORDINANCE NO. 27538

An ordinance amending Section 31-33 of CHAPTER 31, "OFFENSES - MISCELLANEOUS," of the Dallas City Code, as amended; establishing daytime curfew hours for minors; defining terms; providing for offenses and defenses for minors, parents and guardians of minors, and business establishments violating daytime curfew requirements; providing for enforcement of daytime curfew requirements by the police department; providing for waiver by the municipal court of jurisdiction over a minor when required under the Texas Family Code; providing a penalty not to exceed \$500; providing a saving clause; providing a severability clause; and providing an effective date and an expiration date.

WHEREAS, on June 12, 1991, the city council of the city of Dallas adopted Ordinance No. 20966, which added Section 31-33 to the Dallas City Code to establish nighttime curfew hours for minors, which ordinance was amended by Ordinance No. 21309 on June 10, 1992; and

WHEREAS, the city voluntarily delayed enforcement of this juvenile curfew ordinance pending adjudication of a challenge to the ordinance's constitutionality; and

WHEREAS, on August 10, 1992, the United States District Court for the Northern District of Texas permanently enjoined the city from enforcing the juvenile curfew ordinance; on November 19, 1993, the United States Fifth Circuit Court of Appeals overturned the district court's decision and upheld the city's ordinance as constitutional; and in April 1994, the United States Supreme Court declined to review the Fifth Circuit's decision; and

WHEREAS, on May 1, 1994, the city began initial enforcement of the juvenile curfew ordinance; and

WHEREAS, Section 370.002 of the Texas Local Government Code requires that, before the third anniversary of the adoption of a juvenile curfew ordinance and every third year thereafter, the governing body of a home rule city must 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 the ordinance, and abolish, continue, or modify the ordinance, or else the ordinance will automatically expire; and

WHEREAS, after conducting public hearings on the need to continue the juvenile curfew ordinance, the city council adopted Ordinance No. 23079 (passed April 9, 1997; effective May 1, 1997), Ordinance No. 24235 (passed April 26, 2000; effective May 1, 2000), Ordinance No. 25231 (passed April 9, 2003; effective May 1, 2003), Ordinance No. 26336 (passed April 26, 2006; effective May 1, 2006), and Ordinance No. 27527 (passed April 22, 2009; effective May 1, 2009), each of which readopted and continued in effect the juvenile curfew ordinance establishing nighttime curfew hours for minors; and

WHEREAS, the city council has determined that a high rate of truancy exists in the city that significantly contributes to the number of incidences of juvenile crime, juvenile violence, and juvenile gang activity occurring during school hours; and

WHEREAS, the city council has determined that the establishment of daytime curfew hours for minors will help combat truancy, thereby reducing juvenile crime, juvenile violence, and juvenile gang activity occurring in the city during school hours; and

WHEREAS, the city council has determined that the establishment of daytime curfew hours for minors will further assist parents in the control of their children and will be in the interest of the public health, safety, and welfare; and

WHEREAS, on March 25, 2009 and April 22, 2009, the city council conducted public hearings on the need to continue the juvenile curfew ordinance, as modified to include daytime curfew hours for minors in addition to the current nighttime curfew hours for minors; and

WHEREAS, on April 22, 2009, the city council passed Ordinance No. 27527 continuing the nighttime juvenile curfew ordinance, but left the public hearing open on the establishment of daytime curfew hours for minors and directed that the matter be considered on the May 13, 2009 council agenda; and

WHEREAS, the city council has determined that a need exists to modify the juvenile curfew ordinance to include daytime curfew hours for minors in addition to the current nighttime curfew hours for minors, in order to further the health, safety, and welfare of juveniles, and other persons, residing in or visiting the city of Dallas; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Section 31-33, "Curfew Hours for Minors," of CHAPTER 31, "OFFENSES - MISCELLANEOUS," of the Dallas City Code, as amended, is amended to read as follows:

"SEC. 31-33. CURFEW HOURS FOR MINORS.

(a) Definitions. In this section:

(1) CURFEW HOURS means:

(A) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. of the following day; ~~and~~

(B) 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday; and

(C) 9:00 a.m. until 2:30 p.m. on any Monday, Tuesday, Wednesday, Thursday, or Friday.

(2) 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.

(3) 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.

(4) GUARDIAN means:

(A) a person who, under court order, is the guardian of the person of a minor; or

(B) a public or private agency with whom a minor has been placed by a court.

(5) IN SESSION means the status of a school during the fall or spring term when students are required to attend the school. A school is not in session during its summer break or during any holiday or other scheduled general student vacation day or part of a day observed by the school.

(6) MINOR means any person under 17 years of age.

(7) [(6)] 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.

(8) [(7)] PARENT means a person who is:

(A) a natural parent, adoptive parent, or step-parent of another person; or

(B) at least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.

(9) [(8)] 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, apartment houses, office buildings, transport facilities, and shops.

(10) [(9)] REMAIN means to:

(A) linger or stay; or

(B) 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.

(11) [(10)] 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.

(b) Offenses.

(1) A minor commits an offense if he remains in any public place or on the premises of any establishment within the city during curfew hours.

(2) A parent or guardian of a minor commits an offense if he 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.

(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 during curfew hours.

(c) Defenses.

(1) It is a defense to prosecution under Subsection (b) 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, except that this defense does not apply to a violation of the curfew hours described in Subsection (a)(1)(C) of this section;

(G) attending an official school, religious, or other recreational activity supervised by adults and sponsored by the city of Dallas, 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 Dallas, a civic organization, or another 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; or

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(1) married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code.

(2) It is a defense to prosecution under Subsection (b)(3) 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.

(3) It is a defense to prosecution under Subsection (b) of this section for a violation of the curfew hours described in Subsection (a)(1)(C) that:

(A) the school in which the minor was enrolled or otherwise required to attend was not in session;

(B) the minor was on the premises of the school in which the minor was enrolled or otherwise required to attend;

(C) the minor was participating in a school-approved work study program, or was going to the work study program or returning to home or school from the work-study program without any detour or stop;

(D) the minor was on a lunch break from a school that permits an open campus lunch and was qualified to participate in the open campus lunch program;

(E) the minor was on an excused absence from the school in which the minor was enrolled or otherwise required to attend and had permission from a school official, or, in the case of a home-schooled minor, from the minor's parent or guardian; or

(F) the minor was a high school graduate or had received a high school equivalency certificate.

(d) Enforcement.

(1) Before taking any enforcement action under this section, 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 section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in Subsection (c) is present.

(2) A police officer shall not issue a citation to or arrest a parent or guardian of a minor for a violation of Subsection (b)(2) of this section relating to the curfew hours described in Subsection (a)(1)(C), unless the parent or guardian has, within the same calendar year, received at least two prior written warnings from a police officer for a violation of Subsection (b)(2) relating to the curfew hours described in Subsection (a)(1)(C). In calculating the number of warnings received by a parent or guardian in a calendar year, all warnings issued to the parent or guardian will be counted, regardless of whether the warnings relate to the same minor.

(3) A police officer shall not issue a citation to or arrest an owner, operator, or employee of an establishment for a violation of Subsection (b)(3) of this section relating to the curfew hours described in Subsection (a)(1)(C), unless the establishment has, within the same calendar year, received at least two prior written warnings from a police officer for a violation of Subsection (b)(3) relating to the curfew hours described in Subsection (a)(1)(C). In calculating the number of warnings received by an establishment in a calendar year, all warnings issued to any owner, operator, or employee of the establishment will be counted, regardless of whether the warnings relate to the same minor.

(e) Penalties.

(1) A person who violates a provision of this chapter 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.

(2) 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 Subsection (b)(1) of this section and shall refer the minor to juvenile court.

(f) Expiration. This section expires on May 1, 2012, unless sooner terminated or extended by city council ordinance.”

SECTION 2. That the city council public safety committee shall conduct a review of this ordinance by June 1, 2010.

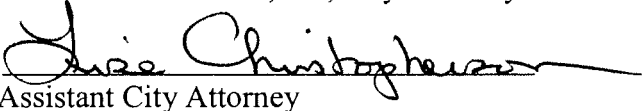
SECTION 3. That CHAPTER 31 of the Dallas City Code, as amended, will remain in full force and effect, save and except as amended by this ordinance.

SECTION 4. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

SECTION 5. That this ordinance will take effect on May 18, 2009, and it is accordingly so ordained.

APPROVED AS TO FORM:

THOMAS P. PERKINS, JR., City Attorney

By 
Assistant City Attorney

Passed MAY 13 2009
LC/DCC/00459A