

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PFLUGERVILLE, TEXAS, REGARDING CURFEW HOURS FOR MINORS; DEFINING TERMS; CREATING OFFENSES FOR MINORS AND BUSINESS ESTABLISHMENTS VIOLATING CURFEW REGULATIONS; PROVIDING AFFIRMATIVE DEFENSES; PROVIDING FOR ENFORCEMENT BY THE POLICE DEPARTMENT; PROVIDING FOR A PENALTY OF UP TO \$500 AND WAIVER BY THE MUNICIPAL COURT OF JURISDICTION OVER A MINOR WHEN REQUIRED UNDER THE TEXAS FAMILY CODE; PROVIDING FOR REVIEW OF THIS ORDINANCE WITHIN THREE YEARS AFTER THE DATE OF INITIAL ADOPTION AND EVERY THIRD YEAR THEREAFTER; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

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

WHEREAS, the City Council finds that persons under the age of 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 Council finds that the City of Pflugerville has an obligation to provide for the protection of minors from each other and from other persons, for the protection of the general public, and for the reduction of the incidence of juvenile criminal activities; and

WHEREAS, the City Council finds that a daytime and nighttime curfew for those under the age of 17 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 Pflugerville.

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

Section 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes and findings of fact.

Section 2. 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:

(a) ***Curfew hours*** mean;

- (1) 11:00 p.m. until 6:00 a.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday; and
- (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 Monday, Tuesday, Wednesday, Thursday and Friday when school is in session.

(b) ***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.

(c) ***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.

(d) ***Guardian*** means:

- (1) A person who, under court order, is the guardian of the person of a minor; or
- (2) A public or private agency with whom a minor has been placed by a court.

(e) ***Minor*** means any person under 17 years of age.

(f) ***Operator*** means any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term "operator" includes the members or partners of an association or partnership and the officers of a corporation.

(g) ***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.

(h) ***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.

(i) ***Remain*** means to:

- (1) Linger or stay; or
- (2) 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.

(j) ***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.

Section 3. Offenses.

- (a) A minor commits an offense if he/she remains, walks, runs, stands, drives or rides about in or upon any public place or on the premises of any establishment within the City during curfew hours.
- (b) The owner, operator, or any employee of an establishment commits an offense if the person knowingly allows a minor to remain, walk, run, stand, drive or ride about in or upon the premises of the establishment during curfew hours.
- (c) A parent having custody of a minor commits a offense if the person knowingly allows the juvenile to be in violation of this chapter. A parent is presumed to knowingly allow or permit the minor to be in violation of this chapter if the minor has two previous convictions for violations of this chapter. For the purpose of this section a deferred adjudication is a conviction.

Section 4. Defenses.

- (a) It is a defense to prosecution 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 an employment activity, or 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 an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Pflugerville, Pflugerville Independent School District, 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 Pflugerville, Pflugerville Independent School District, a civic organization, 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 Tex. Fam. Code, Chapter 31.
- (b) It is an affirmative defense to prosecution 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 the curfew hours and refused to leave.

(c) It is an affirmative defense to prosecution with respect to the curfew hours of 9:00 a.m. until 2:30 p.m. on Monday, Tuesday, Wednesday, Thursday or Friday, that the offense occurred during the scheduled vacation of or on a holiday observed by the school in which the minor is enrolled; or that the minor has graduated from high school or received a high school equivalency certificate; or that the minor has permission to be absent from the school or be in a public place from an authorized school official or a parent or guardian. In the case of a minor being educated in a home school, a parent or guardian shall be deemed a school official.

Section 5. 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. 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 affirmative defense or defense is applicable.

Section 6. Penalties and Jurisdiction.

- (a) A person who violates a provision of this Ordinance 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 five hundred dollars (\$500.00).
- (b) When required by TEX. FAM. CODE § 51.08, the municipal court shall waive original jurisdiction over a minor who violates this section and shall refer the minor to juvenile court.

Section 7. Review of Curfew Ordinance.

As required pursuant to Section 370.002 of the Texas Local Government Code, this Ordinance shall be reviewed before the third anniversary of the date of adoption of this Ordinance, and every third year thereafter. Such review shall include the effects on the community and on the problems the Ordinance was intended to remedy. A public hearing will be held in conjunction with such review. The City Council shall determine whether to abolish, continue, or modify the Ordinance. Failure to abide by this section shall cause this Ordinance to expire.

Section 8. Severability.

If any provision of this Ordinance is illegal, invalid, or unenforceable under present or future laws, the remainder of this Ordinance will not be affected and, in lieu of each illegal, invalid, or unenforceable provision, a provision as similar in terms to the illegal, invalid, or unenforceable provision as is possible and is legal, valid, and enforceable will be added to this Ordinance.

Section 9. Repealer.

This ordinance shall be cumulative of all other ordinances of the City of Pflugerville, and this ordinance shall not operate to repeal or affect any other ordinances of the City of Pflugerville except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, are hereby repealed.

Section 10. Effective Date. This Ordinance will take effect upon its adoption by the City Council in accordance with Section 3.15(d) of the City Charter.

PASSED, APPROVED, AND ADOPTED on the _____ day of _____, 2017.

Victor Gonzales, Mayor

ATTEST:

Karen Thompson, City Secretary

APPROVED TO FORM:

George Hyde, City Attorney
DENTON, NAVARRO, ROCHA, BERNAL, HYDE & ZECH, P.C.