

CITY OF HORSESHOE BAY

ORDINANCE NO. ORD 07-08-28D

JUVENILE CURFEW ORDINANCE

AN ORDINANCE OF THE CITY OF HORSESHOE BAY, TEXAS, PROVIDING FOR; FINDINGS OF FACT; CURFEW REGULATIONS, INCLUDING SCOPE; DEFINITIONS; OFFENSES; DEFENSES; SUNSET REVIEW; ENFORCEMENT, INCLUDING CIVIL FINES NOT TO EXCEED \$500.00 AND CRIMINAL PENALTIES NOT TO EXCEED \$500.00; PROVIDING FOR SEVERABILITY; REPEALER; EFFECTIVE DATE; AND PROPER NOTICE AND MEETING

WHEREAS, it is the intent of the City Council to protect the public health, safety, and welfare, and to protect juveniles in particular; and

WHEREAS, a goal of a limited curfew is to remove minors from City streets between the hours that many crimes occur; and

WHEREAS, it is necessary to protect the rights of minors who, for legitimate reasons, are out during specified curfew hours and use the least restrictive means to implement a curfew for minors; and

WHEREAS, it is important that parents act responsibly with regard to their minor children; and

WHEREAS, the parent shall retain the right to make decisions regarding his or her child in all other areas; and

WHEREAS, it is important for the juvenile curfew ordinance to be adopted;

WHEREAS, the City Council is authorized to establish a juvenile curfew to provide for the public safety under Chapter 341 of the Local Government Code;

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

I. FINDINGS OF FACT

All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council, and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

II. CURFEW REGULATIONS

(a) Scope

The provisions of this Ordinance shall apply within the City Limits (i.e., incorporated municipal boundary).

(b) Definitions

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

Civic organization means a nonprofit corporation or association formed for the use, benefit and enjoyment of its members to achieve religious, recreational, charitable, municipal and/or educational pursuits.

Curfew hours means:

- (1) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday until 6:00 a.m. of the following day; and
- (2) 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday.

Emergency means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term “emergency” 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.

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 the person of a minor; and
- (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.

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.

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 and the common areas of schools, hospitals, apartment house, office buildings, transport facilities and shops.

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.

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.

(c) Compliance Required

It shall be unlawful for any person to violate the provisions of this Ordinance.

(d) Offenses

- (1) A minor commits an offense if he or she remains, walks, runs, stands, drives or rides about 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 or she 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 or she knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

(e) Defenses

- (1) It is a defense to prosecution that the minor was, at the time of the alleged offense:

- (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;
- (G) Attending an official school, religious or other recreational activity supervised by adults and sponsored by the city, 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, a civic organization or another similar entity that takes responsibility for the minor;
- (H) 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
- (I) Married or had been married or had disabilities of minority removed in accordance with V.T.C.A., Family Code Chapter 31.

(2) It is a 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 curfew hours and refused to leave.

(f) Sunset Review

On or before August 1, 2010, and at intervals of three years thereafter, the city council shall:

- (1) Review the effects of this Ordinance upon the community and the problems the Ordinance was intended to remedy;
- (2) Conduct public hearings upon the need to continue this Ordinance; and

- (3) Abolish, continue or amend this Ordinance as appropriate.
- (4) Failure to conduct the triennial sunset review required by this section shall result in the automatic repeal of this ordinance.

III. ENFORCEMENT

(a) Enforcement

(1) 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 section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense is present.

(2) The City shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Ordinance is hereby declared to be a nuisance.

(3) When required by V.T.C.A., Family Code § 51.08, the municipal court shall waive original jurisdiction over a minor who violates this Ordinance and shall refer the minor to juvenile court.

(b) Criminal Prosecution

Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding five hundred dollars (\$500.00) per infraction, except as may be otherwise expressly provided by state law. Each infraction of a provision of this Ordinance shall constitute a separate offense. An offense under this Ordinance is a Class C misdemeanor.

(c) Civil Remedies

Nothing in this Ordinance shall be construed as preempting or waiving the rights of third parties from instituting any action for remedies against anyone who violates this Ordinance. Nothing in this Ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this Ordinance and to seek remedies as allowed by law, including, but not limited to the following:

- (1) injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance;
- (2) a civil penalty up to five hundred dollars (\$500.00) per infraction, for committing acts in violation of the Ordinance or failing to take action necessary for compliance with

