

ORDINANCE NO: _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, CONTINUING AND READOPTING CHAPTER 10, ARTICLE II, CURFEW FOR JUVENILES, OF THE CODE OF ORDINANCES OF THE CITY OF ALLEN, TEXAS; PROVIDING FOR A PENALTY OF A FINE NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (\$500) FOR EACH OFFENSE; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Allen, Collin County, Texas ("City Council") adopted Ordinance No. 2647-8-07, Ordinance No. 2929-7-10, Ordinance No. 3161-7-13, and Ordinance 3392-6-16 pertaining to a citywide curfew for juveniles ("Juvenile Curfew Ordinance"), codified at Chapter 10, Article II of the Code of Ordinances of the City of Allen, Texas; and,

WHEREAS, Section 370.002 of the Texas Local Government Code requires the City Council, before the third anniversary of the date of adoption of the Juvenile Curfew Ordinance, and every third year thereafter, to review the Ordinance's effects on the community and on problems the Ordinance was intended to remedy, conduct public hearings on the need to continue the Ordinance, and to abolish, continue, or modify the Ordinance; and,

WHEREAS, the Chief of Police for the City of Allen, Texas, briefed the City Council regarding the Juvenile Curfew Ordinance's effects on the community and on problems the Ordinance was intended to remedy; and,

WHEREAS, in accordance with Section 370.002 of the Texas Local Government Code, the City Council has reviewed the Juvenile Curfew Ordinance's effects on the community and on the problems the Ordinance was intended to remedy and conducted a public hearing on June 25, 2019, regarding the need to continue the Ordinance; and,

WHEREAS, based on the foregoing, the City Council finds that it is in the best interest of the health, safety and welfare of the City of Allen, Texas, to continue and readopt the Juvenile Curfew Ordinance.

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

SECTION 1. The findings set forth above are incorporated in the body of this Ordinance as if fully set forth herein.

SECTION 2. Chapter 10, Article II, of the Code of Ordinances of the City of Allen, Collin County, Texas (Juvenile Curfew Ordinance), is hereby continued and readopted to read as follows:

"ARTICLE II – CURFEW FOR JUVENILES

Sec. 10-21. Definitions.

For purposes of this article, the following terms shall apply:

Curfew hours means 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday until 6:00 a.m. of the following day; and 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 shall include but is not limited to fire, natural disaster, and any 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 any person to whom custody of a juvenile has been given by a court order.

Juvenile means any person under seventeen (17) years of age and over nine (9) years of age.

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

Parent means a person who is the natural or adoptive parent of a person, to include a court appointed guardian or other person eighteen (18) years or older, authorized by the parent, by a court order, or by the court, or by the court appointed guardian to have the care and custody of a person.

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.

Remain means to linger, stay, walk, run, stand, drive or ride; or 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.

Sec. 10-22. Offenses.

(a) A juvenile commits an offense if the juvenile 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 juvenile commits an offense if such person knowingly permits, or by insufficient control allows, the juvenile to purposefully remain, walk, run, stand, drive, or ride about in or upon any public place or on the premises of any establishment within the city during curfew hours.

(c) The owner, operator, or any employee of any establishment within the city commits an offense if such person knowingly allows a juvenile to remain upon the premises of the establishment during curfew hours.

Sec. 10-23. Defenses to prosecution.

(a) It is a defense to prosecution under subsection 10-22(a) that the juvenile was:

(1) Accompanied by the juvenile's parent or guardian;

(2) On an errand at the direction of the juvenile'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 juvenile's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the police department about the juvenile's presence;

- (7) Attending a religious service, activity, or a recreational or social activity sponsored or provided by a religious organization, or going to and returning home therefrom without any detour or stop;
- (8) Attending a recreational or social activity supervised by adults and sponsored by the city or by a school, a civic organization, or other similar entity that takes responsibility for the juveniles, or going to or returning home therefrom without any detour or stop;
- (9) Exercising First Amendment rights protected by the United States Constitution; or
- (10) Married or had been married or had disabilities of minority removed in accordance with V.T.C.A., Family Code ch. 31, as amended.

(b) It is a defense to prosecution under subsection 10-22(c) that the owner, operator, or employee of an establishment promptly notified the police department that a juvenile was present on the premises of the establishment during curfew hours and refused to leave.

Sec. 10-24. Enforcement.

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 article unless the officer reasonably believes that an offense has occurred and that based on any response and other circumstances, no defense in section 10-23 is present.

Sec. 10-25. Penalties.

(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 five hundred dollars (\$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 juvenile who violates subsection 10-22(a) and shall refer the juvenile to juvenile court.

Secs. 10-26—10-29. Reserved.”

SECTION 3. Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the of the City of Allen, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of Five Hundred Dollars (\$500) for each offense.

SECTION 4. All provisions of the ordinances of the City of Allen in conflict with the provisions of this Ordinance are hereby, repealed, and all other provisions of the ordinances of the City of Allen not in conflict with the provisions of this Ordinance shall remain in full force and effect.

SECTION 5. Should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

SECTION 6. This Ordinance shall take effect immediately from and after its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 25TH DAY OF JUNE 2019.

APPROVED:

Stephen Terrell, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY
(PGS:5-28-19:TM 108324)

Shelley B. George, CITY SECRETARY