

ORDINANCE NO. 2419

AN ORDINANCE AMENDING CHAPTER 8, OFFENSES AND NUISANCES, SECTION 8, "CURFEW FOR MINORS" OF THE CODE OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS, AS AMENDED, BY ADDING DEFINITIONS; REQUIRING THE CHIEF OF POLICE TO MAKE PERIODIC REPORTS TO THE CITY COUNCIL CONCERNING THE EFFECTIVENESS AND NEED FOR THE SECTION; REQUIRING THE CITY COUNCIL TO PERIODICALLY REVIEW THE EFFECTS OF THE SECTION ON THE COMMUNITY AND THE PROBLEMS THE SECTION IS INTENDED TO REMEDY; TO HOLD PUBLIC HEARINGS, AND TO ABOLISH, CONTINUE OR MODIFY THE SECTION; PROVIDING THAT FAILURE BY THE CITY COUNCIL TO CONDUCT SUCH PERIODIC REVIEWS AND HEARINGS SHALL CAUSE THE SECTION TO EXPIRE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS THAT:

ARTICLE I.

That Chapter 8, Offenses and Nuisances, Section 8, Curfew for Minors shall be amended as follows:

SECTION 8: CURFEW 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) 12:30 a.m. until 6:00 a.m. on any Friday or Saturday.
- (2) **Date of the Adoption of this Section means** July 28, 2006.
- (3) **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.
- (4) **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.

- (5) **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.
- (6) **Minor** means any person under seventeen (17) years of age.
- (7) **Officer** means a police officer.
- (8) **Operator** means any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes, but is not limited to, the members or partners of an association or partnership and the officers of a corporation.
- (9) **Parent** means a person who is:
- (a) a natural parent, adoptive parent, or step-parent of another person; or
 - (b) at least eighteen (18) years of age and authorized by a parent or guardian to have the care and custody of a minor.
- (10) **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.
- (11) **Remain** means to:
- (a) linger or stay; or
 - (b) fail to leave premises when requested to do so by an officer or the owner, operator, or other person in control of the premises.
- (12) **This Section** means Chapter 8, Section 8 of the Terrell City Code.

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;
 - (g) attending an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Terrell, 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
 - (i) 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.

D. Enforcement.

Before taking any enforcement action under this Section, an 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.

E. Penalties.

- (1) A person who violates a provision of this Section 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).
- (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. Report By the Chief of Police

Before the third anniversary of the date of the adoption of this Section the Chief of Police shall review this Section, report to the City Council, and make recommendations concerning the effectiveness of and need for this Section. The Report By the Chief of Police shall specifically include the following information:

- (1) The practicality of enforcing this Section and any problems with enforcement identified by the Police Department;
- (2) The impact of this Section on crime statistics;
- (3) The number of persons successfully prosecuted for a violation of this Section; and
- (4) The City's net cost of enforcing this Section.

G. City Council Review.

Before the third anniversary of the date of the adoption of this Section, and every third year thereafter, the City Council shall:

- (1) review this Section's effects on the community and on the problems the Section was intended to remedy;
- (2) conduct public hearings on the need to continue the Section; and
- (3) abolish, continue or modify the Section.

Failure by the City Council to act in accordance with paragraphs (G) (1) - (3) shall cause this Section to expire.

ARTICLE II.

All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

ARTICLE III.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgement or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and section of this Ordinance since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

ARTICLE IV.

This ordinance will take effect immediately from and after its passage and the publication of the caption as the law in such cases provides.

PASSED AND APPROVED THIS the 21st day of July, 2009.
PASSED AND ADOPTED THIS the 4th day of August, 2009.

Hal Richards, Mayor

Attest:

John Rounsavall, City Secretary

Approved as to Form:

Mary Gayle Ramsey, City Attorney