

ORIDINANCE NO. 2017-DRAFT

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS, REENACTING AND AMENDING CHAPTER 95 ENTITLED “CURFEW HOURS FOR MINORS” OF THE CODE OF ORDINANCES, DEFINING TERMS, CREATING HOURS FOR CURFEW FOR MINORS, CREATING OFFENSES FOR MINORS, PARENTS OF MINORS, AND BUSINESS ESTABLISHMENTS VIOLATING CURFEW REGULATIONS, PROVIDING FOR ENFORCEMENT BY THE POLICE DEPARTMENT; PROVIDING A PENALTY OF UP TO \$500 FOR EACH OFFENSE; MAKING VARIOUS FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; CONTAINING A SEVERABILITY CLAUSE; REPEALING ALL OTHER ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR PUBLICATION AND PROVIDING THAT THIS ORDINANCE SHALL BE EFFECTIVE FROM AND AFTER SEPTEMBER 7, 2017.

WHEREAS, Texas Local Government Code, Section 370.002 provides as follows:

- (a) Before the third anniversary of the date of adoption of a juvenile curfew ordinance by a general-law municipality or a home-rule municipality or an order of a county commissioners court, and every third year thereafter, the governing body of the general-law municipality or home-rule municipality or the commissioners court of the county shall:
 - (1) review the ordinance or order’s effects on the community and on problems the ordinance or order was intended to remedy;
 - (2) conduct public hearings on the need to continue the ordinance or order; and
 - (3) abolish, continue, or modify the ordinance or order.
- (b) Failure to act in accordance with Subsections (a)(1) -(3) shall cause the ordinance or order to expire.

WHEREAS, a public hearing was held on August 31, 2017, and September 7, 2017; and

WHEREAS, the City Council originally adopted a Juvenile Curfew Ordinance on May 29, 2001 by Ordinance No. 052901-C which expired May 29, 2004. The City Council then adopted another a Juvenile Curfew Ordinance on February 19, 2008 by Ordinance Chapter 95 which expired February 19, 2011. Finally, City Council adopted another Juvenile Curfew Ordinance on October 16, 2014 by Ordinance NO. 2014-10-16A; and

WHEREAS, after employing a Juvenile Curfew Ordinance since May 29, 2001, the Overton Police Department has concluded that such an ordinance is effective in reducing juvenile crime and the incidents of juvenile victims of crime during the curfew period; and

WHEREAS, a copy of Chapter 95 entitled “Curfew Hours for Minors” enacted by Ordinance No. 2014-10-16A is shown as an attachment to this Ordinance as Attachment A.

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

SECTION 1. Chapter 95 of the Code of Ordinances for the City of Overton, Texas is hereby reenacted and amended as shown in Attachment A.

SECTION 2. If any section, provision, subsection, paragraph, sentence, clause, phrase, or word in this ordinance or application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such holdings shall not affect the validity of the remaining portions of this Ordinance, and the City Council of the City of Overton, Texas, hereby declares it would have enacted such remaining portions, despite such invalidity.

SECTION 3. All Ordinances or parts of Ordinances in conflict herewith are repealed to the extent of conflict only.

SECTION 4. This Ordinance shall be in full force and effect from and after September 7, 2017.

PASSED AND APPROVED, this the 7th day of September, 2017.

C. R. Evans Jr., Mayor
City of Overton, Texas

ATTEST:

Rachél Gafford, City Secretary

APPROVED AS TO FORM:

Blake Thompson, City Attorney

ATTACHMENT A

CHAPTER 95: CURFEW HOURS FOR MINORS

Section

- 95.01 Definitions
- 95.02 Curfew Hours for Minors
- 95.03 Defenses to Prosecution
- 95.04 Enforcement procedures
- 95.05 Parental responsibility
- 95.06 Penalty
- 95.07 Review

§ 95.01 Definitions

In connection with this article, the following terms, phrases and words, shall have the meaning given herein:

Adult. A responsible person, 18 years of age or older, other than a parent, guardian or custodian, in whose care and under whose individualized supervision the minor has been placed by the parent, guardian, or custodian and under circumstance which demonstrate actions indicating oversight and concern for the minor.

City. The City of Overton, Texas as defined by its corporate boundaries.

Minor. Any person under the age of seventeen (17) or, in equivalent phrasing often herein employed, any person sixteen (16) or less years of age.

Parent. Any person having legal custody of a minor:

- (1) As a natural or adoptive parent;
- (2) As legal guardian;
- (3) As a person who stands in loco parentis; or
- (4) As a person to whom legal custody has been given by order of court, including both a managing conservator and a possessory conservator.

Parking lot. Any area, whether paved or unpaved, whether public or private, used or intended to be used for the storage or parking of vehicles.

Remain. To stay behind, to tarry or to stay unnecessarily upon the streets or parking lots of the city.

Street. A way or place, of whatsoever nature, open to the use of the public as a matter of right for purpose of vehicular travel or in the case of sidewalk thereof for pedestrian travel. The term street includes the legal right-of-way including but not limited to traffic lanes, the curbs, the sidewalks, whether paved or unpaved, and any grass plots or other grounds found within the legal right-of-way of a

street. The term street applies irrespective of what it is called or formally named, whether alley, avenue, court, road or otherwise.

Time of night. As referred to herein, the time of night is based upon the prevailing standard of time, whether central standard or central daylight, saving time. The time observed in the city's administrative offices and police station shall be prima facia evidence of the time of night.

Year of age. Continues from one birthday, such as the sixteenth (16th) to (but not including the day of) the next seventeenth (17th) birthday, making it clear that "sixteen (16) or less years of age" is herein treated as equivalent to the phrase "under seventeen (17) years of age."

§ 95.02 Curfew hours for minors

It shall be unlawful for any person sixteen (16) or less years of age (under seventeen (17)) to be or remain in or upon the streets or parking lots within the city at night during the period of 10:00 p.m. to 6:00 a.m. Sunday through Thursday and 12:00 a.m. to 6:00 a.m. Friday and Saturday.

§ 95.03 Defenses to Prosecution

It shall be a defense to prosecution under Section 95.02 of this article where one of the following situations exists:

- (1) The minor was accompanied by a parent.
- (2) The minor was accompanied by an adult authorized by a parent of such a minor for a designated period of time and purpose within specified area.
- (3) The minor was in route, using the most direct route, to or from the following:
 - (a) A place of the minor's employment;
 - (b) A restaurant, library, movie theater, store or other place of public accommodation;
 - (c) A play, dance, sporting event or other of public entertainment;
 - (d) A church, meeting hall, school, courthouse or other place of public assembly or worship; or
 - (e) An emergency errands.
- (4) The minor was 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.
- (5) The minor was married or had been married or had disabilities of minority removed in accordance with chapter 31 of the Texas Family Code, as same may hereafter be amended.

§ 95.04 Enforcement procedures

- (a) If a police officer determines that a minor violation of this provision is the minor’s first violation of this provision, the police officer shall issue a warning to the minor and notify the minor’s parent(s) of the violation. Subsequently, any police officer upon finding a minor in violation of **Section 95.02**, may transfer the case to proper authorities for handling under the provisions of title 3 of the Texas Family Code, as same may hereafter be amended.
- (b) In addition, a complaint may be filed against the parents in municipal court for violation hereof. The police department shall file all necessary legal papers, supply all necessary documentation, and provide necessary testimony as required for pursuing violation of this article by either the minor or by any parent or guardian.

§ 95.05 Parental Responsibility

It shall be unlawful for a parent having legal custody of a minor knowingly to permit or by inefficient control to allow, such minor to be or remain upon any city street or parking lot under circumstances not constituting a defense to, or otherwise beyond the scope of this article. The term “knowingly” includes knowledge which a parent should reasonably be expected to have concerning the whereabouts of a minor in that parent’s legal custody. It is intended that a reasonable community standard of parental responsibility be applied through an objective test. It shall be no defense that a parent was completely indifferent to the activities or conduct or whereabouts of such minor.

§ 95.06 Penalty

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars (\$500.00) provided, however, that no penalty shall be greater or less than the penalty provided for the same or a similar offense under the laws of the state.

§ 95.07 Review

- (a) As required by section 370.002 of the Texas Local Government Code, before the third anniversary of the date of adoption of the juvenile curfew ordinance the city council shall:
 - (1) Review the ordinance effects on the community and on problems the article was intended to remedy;
 - (2) Conduct public hearings on the need to continue the article; and
 - (3) Abolish, continue, or modify the article.
- (b) Failure to act in accordance with subsection (a)(1)-(3) shall cause the article to expire.