

ORDINANCE NO 2009 - 1

AN ORDINANCE ADOPTING A CURFEW FOR MINORS, SECTION 62-2; DEFINING TERMS; CREATING OFFENSES FOR MINORS, PARENTS AND GUARDIANS OF MINORS, AND BUSINESS ESTABLISHMENTS VIOLATING CURFEW REGULATIONS; PROVIDING DEFENSES; PROVIDING FOR ENFORCEMENT BY THE POLICE DEPARTMENT; PROVIDING FOR WAIVER BY THE MUNICIPAL COURT OF JURISDICTION OVER A MINOR WHEN REQUIRED UNDER THE TEXAS FAMILY CODE; PROVIDING A PENALTY NOT TO EXCEED \$500; DECLARING AN EMERGENCY, AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, persons 17 years of age and under 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 of Cumby has an obligation to provide for the protection of minors from each other and from other persons, for the enforcement of parental control over and responsibility for children, for the protection of the general public, and for the reduction of the incidence of juvenile criminal activities; and

WHEREAS, a curfew for those 17 years of age and under 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 Cumby;

NOW THEREFORE, BE IT ORDAINED by the City of Cumby, Texas:

Section 62-2 be re-adopted in accordance with Section 370.002 of the Local Government Code.

SECTION 62-2: CURFEW HOURS FOR MINORS

A. DEFINITIONS

CURFEW HOURS

- a. 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. of the following day; and
- b. 11:00 p.m. until 6:00 a.m. on any Friday and Saturday.

EMERGENCY

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, and automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

ESTABLISHMENT

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

- 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.

MINOR

Minor means any person 17 years of age and under.

OPERATOR

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

PARENT

- a. A natural parent, adoptive parent or step-parent of another person; or
- b. At least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.

PUBLIC PLACE

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

- a. Linger or stay; or
- b. 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

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.

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 residents 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 Cumby, 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 Cumby, 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 to 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, 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 in SubSection (C) is present.

E. PENALTIES

1. A person who violates a provision of this chapter 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 \$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 Section (B) (1) of this section and shall refer the minor to juvenile court.

WHEREAS, if any section, sub-section, word, sentence, or phrase of this Ordinance is declared to be invalid, it shall not affect the validity of this Ordinance; and


WHEREAS, an emergency is apparent for the immediate preservation of order, health, safety and general welfare of the public, all rules and regulations requiring the reading of Ordinance more than one time and no more than one occasion are hereby suspended.


NOW, THEREFORE, this Ordinance shall take effect and be in force from and after its passage and approval.

PASSED AND APPROVED at a regular meeting of the city Council of the City of Cumby, Texas, on this the 2ND day of FEBRUARY 2009.

ATTEST:

CITY OF CUMBY, TEXAS:


Angie Allen, City Secretary


Jeff Strickland, Mayor

(seal)