

ORDINANCE NO. 19-02-12

AN ORDINANCE OF THE CITY OF DILLEY, TEXAS, BY PROVIDING FOR CURFEW HOURS FOR MINORS IN THE CITY; BY AMENDING ORDINANCE NO. 11-9-82-1; BY PROVIDING A PENALTY CLAUSE; BY PROVIDING A REPEALER CLAUSE; AND BY PROVIDING EFFECTIVE DATE

WHEREAS, persons under the age of seventeen (17) years are particularly susceptible by their lack of maturity and experience to participate in unlawful activities and to be victims of older perpetrators of crime; and

WHEREAS, the City of Dilley, Texas, 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 the children, for the protection of the general public and for the reduction of the incidence of juvenile criminal activities; and

WHEREAS, on September 21, 1982, the City Council of the City of Dilley, Texas, adopted juvenile curfew Ordinance No. 11-9-82-1; and

WHEREAS, Section 370.002 of the Texas Local Government Code, as amended, provides that the City Council of the City of Dilley, Texas, before the third anniversary of the date of the adoption of a juvenile curfew ordinance City Council is required to (1) review the ordinance's effect on the community and on the problems the ordinance was intended to remedy; (2) conduct public hearings on the need to continue the juvenile curfew ordinance; and (3) abolish, continue, or modify the juvenile curfew ordinance; and

WHEREAS, the City Council of the City of Dilley, Texas, has conducted the review of the ordinance's effect, and has held the requisite public hearings on the juvenile curfew ordinance; and

WHEREAS, the City Council has determined that a curfew for those under the age of seventeen (17) years is in the best interest of the public health, safety and general welfare of the residents of the City.

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DILLEY, TEXAS:

Section 1. FINDINGS INCORPORATED

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

Section 2. That Ordinance No. 11-9-82-1 of the City of Dilley, Texas shall be amended and read as follows:

CURFEW

A. DEFINITIONS.

For the purpose of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

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;
- (2) 12:01 a.m. on any Friday or Saturday until 6:00 a.m. of the following day;

Emergency means unforeseen circumstances that call 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.

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, by legal appointment of a court, has custody of a minor; or
- (2) A public or private agency with whom a minor has been placed by a court.

Minor means any person under seventeen (17) years of age.

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

Parent means a person who is:

- (1) A presumed, biological, or legal parent or a step-parent of another minor; or
- (2) At least eighteen (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 houses, 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 public place or establishment.

Serious Bodily Injury means bodily injury that creates a substantial risk of death or causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

B. OFFENSES

- (a) 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.
- (b) A parent or guardian of a minor commits an offense if they knowingly permit, or by insufficient control allow the minor to remain in any public place or establishment within the city during curfew hours.
- (c) The owner, operator or any employee of an establishment commits an offense if they knowingly allow a minor to remain on the establishment during curfew hours.

C. DEFENSES AGAINST CURFEW.

- (a) It is a defense to prosecution under Section B that the minor was:
 - (1) Accompanied by the minor's parent or guardian;
 - (2) On an errand at the direction of the minor'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 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;
 - (7) Attending a recreational or social activity supervised by adults who take responsibility for the minors; and, sponsored by a school, the city, or a nonprofit

organization that sponsors or provides recreational or social activities for minors; or, going to and returning home therefrom without any detour or stop;

(8) Attending a religious service, activity, or recreational or social activity sponsored or provided by a religious organization, or going to and returning therefrom without any detour or stop;

(9) 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 Married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code, as amended.

(b) It shall be defense to prosecution under Section B 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 OF CURFEW

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 Section 2 is present.

E. CITY ADMINISTRATOR'S REPORT

Before the third anniversary of the date of the adoption of this Ordinance, the City Administrator shall review this Ordinance, report to the City Council, and make recommendations concerning the effectiveness of and need for this Ordinance. The City Administrator's report shall specifically include the following information:

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

F. CITY COUNCIL REVIEW.

Before the third anniversary of the date of the adoption of this Ordinance, and every third year thereafter, the City Council, pursuant to Section 370.002 of the Texas Local Government Code, as amended, shall:

- (1) review the 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 this Section shall cause this Ordinance to expire.

Section 3. PENALTIES.

- (a) A person who violates a provision of this division 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.
- (b) 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 and shall refer the minor to juvenile court.

Section 4. SAVINGS CLAUSE

All rights and remedies of the City of Dilley, Texas, are expressly saved as to any and all violations of the provisions of the Ordinance or any other ordinance which have occurred at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

Section 5. CUMULATIVE CLAUSE

This Ordinance shall be cumulative of all provisions of State or Federal law and other ordinances of the City of Dilley, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed when permitted by law.

Section 6. SEVERABILITY CLAUSE

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections 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 sections of this ordinance, since the same would have been enacted by the City Council without the incorporation of this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

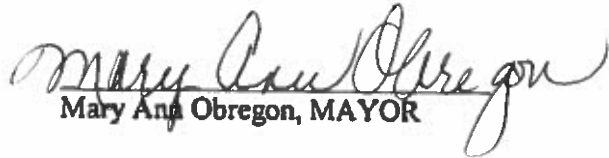
Section 7. REPEALER CLAUSE

Any provision of any prior ordinance of the City whether codified or uncodified, which are in conflict with any provision of the Ordinance, are hereby repealed to the extent of the conflict, but all other provisions of the ordinances of the City whether codified or uncodified, which are not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

Section 8. EFFECTIVE DATE

This Ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Dilley, Texas, on this the 12th day of February, 2019.


Mary Ann Obregon, MAYOR

ATTEST:


Juanita G. Fonseca, CITY SECRETARY

APPROVED AS TO FORM:

CITY ATTORNEY