

**CITY OF BALCH SPRINGS, TEXAS**

**ORDINANCE NO. 1090-06**

**JUVENILE CURFEW ORDINANCE**

**AN ORDINANCE OF THE CITY OF BALCH SPRINGS, TEXAS REGARDING CURFEW HOURS FOR MINORS; DEFINING TERMS; CREATING OFFENSES FOR MINORS, PARENTS AND GUARDIANS OF MINORS, AND BUSINESS ESTABLISHMENTS VIOLATING CURFEW REGULATIONS; PROVIDING AFFIRMATIVE DEFENSES; PROVIDING FOR ENFORCEMENT BY THE POLICE DEPARTMENT; PROVIDING FOR PENALTIES AND WAIVER BY THE MUNICIPAL COURT OF JURISDICTION OVER A MINOR WHEN REQUIRED UNDER THE TEXAS FAMILY CODE; PROVIDING FOR REVIEW OF THIS ORDINANCE WITHIN THREE YEARS AFTER THE DATE OF INITIAL ADOPTION AND EVERY THIRD YEAR THEREAFTER; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council has determined that there has been an increase in juvenile violence, juvenile gang activity, and crime by persons under the age of 17 in the City of Balch Springs and

**WHEREAS**, persons under the age of 17 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 Balch Springs 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 daytime and nighttime curfew for those under the age of 17 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 Balch Springs;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF Balch Springs:** that

**SECTION 1. CURFEW HOURS FOR MINORS**

(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;
- (b) 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday; and
- (c) 9:00 a.m. until 2:30 p.m. on Monday, Tuesday, Wednesday, Thursday or Friday.

(2) 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.

(3) 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.

(4) 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.

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

(6) 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.

- (7) Parent means a person who is:
- (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.
- (8) 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.
- (9) Remain means to:
- (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.
- (10) Serious Bodily Injury means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss of impairment of the function of any bodily member or organ.

## **SECTION 2. OFFENSES**

- (1) A minor commits an offense if he remains, walks, runs, stands, drives or rides about in or upon 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 or she knowingly permits, or by insufficient control allows, the minor to remain, walk, stand, drive, or ride about in or upon 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, walk, run, stand, drive or ride about in or upon the premises of the establishment during curfew hours.

## **SECTION 3. DEFENSES**

- (1) It is an affirmative defense to prosecution under Section 2 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 Balch Springs, the Dallas Independent School District, the Mesquite Independent School District, 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 Balch Springs, the Dallas Independent School District, the Mesquite Independent School District, 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 an affirmative defense to prosecution under Section 2 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 the curfew hours and refused to leave.

(3) It is an affirmative defense to prosecution under Section 2 with respect to the curfew hours of 9:00 a.m. until 2:30 p.m. on Monday, Tuesday, Wednesday, Thursday or Friday, that the offense occurred during the scheduled vacation of or on a holiday observed by the school in which the minor is enrolled; or that the minor has graduated from high school or received a high school equivalency certificate; or that the minor has permission to be absent from the school or be in a public place from an authorized school official or a parent or guardian. In the case of a minor being educated in a home school, a parent or guardian shall be deemed a school official.

#### **SECTION 4. ENFORCEMENT**

Before taking any enforcement action under this Ordinance, 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 Ordinance unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no affirmative defense in Section 3 is applicable.

#### **SECTION 5. PENALTIES**

(1) A person who violates a provision of this Ordinance 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 Section 2(1) of this Ordinance and shall refer the minor to juvenile court.

#### **SECTION 6. REVIEW OF CURFEW ORDINANCE**

This Ordinance shall be reviewed every third year prior to May 9 of such year as required by Section 370.002 of the Texas Local Government Code. The first review shall be conducted no later than May 22, 2009, and every third year thereafter. Such review shall be conducted following a public hearing regarding the need to continue the Ordinance and the City Council shall have the option to continue, abolish or modify the Ordinance based upon their review of the Ordinance's effects on the community and on the problems the Ordinance is intended to remedy.

#### **SECTION 7. REPEALER**

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

#### **SECTION 8. SEVERABILITY**

It is the intention of the City Council that this Ordinance, and every provision thereof, shall be considered severable and the invalidity of any section, clause or provision or part or portion of any section, clause, or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

**SECTION 9. EFFECTIVE DATE**

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

**ADOPTED AND APPROVED on this the 22nd day of May, 2006.**

Approved:

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Wayne Middleton, Mayor

Attest:

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Cindy Gross, City Secretary