

## ORDINANCE NO. 335

**AN ORDINANCE ENACTING A CURFEW FOR MINORS; PROVIDING CURFEW HOURS FOR MINORS; PROVIDING FOR OFFENSES AND DEFENSES; PROVIDING FOR A PENALTY FOR VIOLATION OF THE ORDINANCE BY MINORS, THEIR PARENTS OR GUARDIANS, AND OWNERS, OPERATORS AND EMPLOYEES OF ESTABLISHMENTS OF A FINE NOT TO EXCEED \$500; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR ENFORCEMENT**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST ORANGE, TEXAS:**

### **CURFEW FOR MINORS**

#### **Section I. Purpose**

The purpose of this ordinance is to:

- (1) Promote the general welfare and protect the general public through the reduction of juvenile violence and crime within the city;
- (2) Promote the safety and well-being of the city's youngest citizens, persons under the age of seventeen (17), whose inexperience renders them particularly vulnerable to becoming participants in unlawful activities, particularly drug activities, and to being victimized by older perpetrators of crime' and
- (3) Foster and strengthen parental responsibility for children.

#### **Section 2. Definitions.**

Curfew hours for minors:

- Sunday 11:00 p.m. until 6:00 a.m. Monday
- Monday 11:00 p.m. until 6:00 a.m. Tuesday
- Tuesday 11:00 p.m. until 6:00 a.m. Wednesday
- Wednesday 11:00 p.m. until 6:00 a.m. Thursday
- Thursday 11:00 p.m. until 6:00 a.m. Friday
- Friday 12:00 midnight until 6:00 a.m. Saturday
- Saturday 12:00 midnight until 6:00 a.m. Sunday

**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, any situation requiring immediate action to prevent serious bodily injury or loss of life, or a serious medical condition of sudden onset.

**Minor** means any person under seventeen (17) years of age who has not been emancipated by court order pursuant to Chapter 31 of the Texas Family Code.

**Parent** means a person who is:

- (1) A minors biological, adoptive, or step parent and who has legal custody of a minor (including either parent, if custody is shared under a court order or agreement);
- (2) The biological or adoptive parent with whom a minor regularly resides;
- (3) Judicially appointed as a legal guardian of the minor; and/or Eighteen (18) years of age or older standing in loco parentis (as indicated by the authorization of an individual listed in part(s) (1), (2) or (3) of this definition, above, for the person to assume the care or physical custody of the child, or as indicated by any other circumstances).

**Guardian** means a person who:

- (1) Under court order, is the guardian of the person of a minor; or
- (2) Is a public or private agency with whom a minor has been placed by a court.

**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, parks, streets, highways, the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, shops, shopping malls, and shall include parking facilities adjacent to the same.

**Establishment** means any privately-owned or leased place of business or leased public facility operated for a profit to which the public is invited, including but not limited to, any place of amusement or entertainment, such as theaters and game rooms.

**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.

**Remain** means to:

- (1) Linger or stay at or upon a place (premises); or
- (2) Fail to leave the place/premises when requested to do so by a police officer or the owner, operator, or other person in control of the place/premises.

### **Section 3. Offenses**

- (a) It shall be unlawful for any minor to knowingly remain in or upon any public place or to remain in any motor vehicle operating or parked therein or thereon, or to remain in or upon the premises if any establishment within the city during the curfew hours for minors.
- (b) A parent or guardian of a minor commits an offense if he or she knowingly permits, encourages, or by insufficient control allows a minor to remain in or upon any public place, or to remain in any motor vehicle operating or parked therein or thereon, or to remain in or upon the premises of any establishment within the city during the curfew hours for minors.
- (c) The owner, operator, or any employee of any private establishment or the lessee of any public facility commits an offense if he or she knowingly permits, allows, or encourages a minor to remain in or upon the premises of the establishment during curfew hours for minors.
- (d) It shall be unlawful for any person (including any minor) to give a false name, address, date of birth, or telephone number to any officer investigating a possible violation of this section.

### **Section 4. Defenses**

- (a) It is a defense to prosecution under offenses that the minor was:
  - (1) Accompanied by the minor's parent or guardian;
  - (2) Accompanied by an adult authorized by a parent or guardian;
  - (3) On an errand at the direction of the minor's parent or guardian, and the minor has in his possession a writing signed by the parent containing the following information: the name, signature, current date, address and telephone number of the parent authorizing the errand, the telephone number where the parent may be reached during the errand, the name of the minor, and a brief description of the errand, the minor's destination(s) and the hours the minor is authorized to be engaged in the errand; or
  - (4) In a motor vehicle involved in interstate travel;
  - (5) Engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
  - (6) Involved in a case of "reasonable necessity" after parental notification of the police;
  - (7) Involved in an emergency;

(8) 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;

(9) Attending an official school, religious, or other recreational activity supervised by adults and sponsored by, the city, civic organization, or another similar entity that takes responsibility for the minor, as well as going to or returning home from the same, without any detour or stop.

(10) 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;

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

(12) Engaged in lawful volunteer or charity work at a recognized charity institution or is going to or coming from such activity without detour or stop.

(b) It is a defense to prosecution under subsection 2(c) 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.

### **Section 5. School age to be in school.**

(a) Compulsory school age to be in attendance at school; parental duties imposed.

(1) No minor between the ages of six (6) and sixteen (16), inclusive, other than a minor that has been suspended or expelled from school, shall be at any place within the city except in attendance at school between the hours of 9:00 a.m. and 3:00 p.m. during any official school day, unless the minor has written proof from school authorities excusing him or her from attending school at that particular time, or unless the minor is accompanied by a parent or legal guardian, or a responsible adult selected by the parent or legal guardian to supervise the minor.

(2) Each parent or legal guardian of a minor between the ages of six (6) and sixteen (16), inclusive, shall have a duty to prohibit the minor from behaving contrary to subsection (a) (1) of this section. No person shall fail to fulfill the duty imposed by the section.

(3) Any person who violates subsection (a) (2) of this section is guilty of failing to supervise a minor of compulsory school age.

(b) Children suspended or expelled from school to remain under supervision; parental duties imposed. If a minor between the ages of six (6) and sixteen (16), inclusive, is suspended or expelled from school, then each parent or legal guardian of the minor shall have the following duties for the duration of the suspension or expulsion:

(1) The duty to personally supervise the minor, or to arrange for a responsible adult to supervise the minor, at the times that the minor would have been required to be in attendance at school had he or she not been suspended or expelled; and

(2) The duty to prohibit the minor from being at any establishment or public place at the times the minor would have been required to be in attendance at school had he or she not been suspended or expelled, except in the circumstances found in Section 3 hereof.

(c) No minor between the ages of six (6) and sixteen (16), inclusive, that has been suspended or expelled from school shall fail to comply with supervision provided or arranged by a parent or legal guardian pursuant to subsection (b) of this section.

(d) No minor between the ages of six (6) and sixteen (16), inclusive, that has been suspended or expelled from school shall be in any establishment or public place at the times that he or she would have been required to be in attendance at school or employment had he or she not been suspended or expelled, except in the circumstances described in Section 3 hereof

### **Section 6. Penalties**

(a) It shall be unlawful to intentionally, knowingly, recklessly, or with criminal negligence violate this section. Such violation shall be a Class C misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00).

(b) 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.

- (c) 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 (a) of this chapter and shall refer the minor to juvenile court.

**BE IT FURTHER ORDAINED** that if any provision, section, sentence, clause or phrase of this ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void, invalid, or for any reason unenforceable, the validity of the remaining portion of this ordinance or its application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council of the City of West Orange in adopting this ordinance that no portion hereof or provision or regulation contained herein, shall become inoperative or fail by reason of any unconstitutional or invalidity of any other portion, provision or regulation.

**BE IT FURTHER ORDAINED** that this ordinance shall become effective upon the adoption of said ordinance by the City Council of the City of West Orange, Texas.

**READ, PASSED, APPROVED AND AUTHENTICATED** the 1<sup>st</sup> day of March 2005.

*/s/ Roy McDonald*

---

Roy McDonald, Mayor  
City of West Orange, Texas

ATTEST:

*/s/ Theresa Van Meter*

---

Theresa Van Meter, City Secretary

APPROVED:

*/s/ Joe Alford*

---

Joe Alford, City Attorney