

ORDINANCE NO. 01-98

AN ORDINANCE TO PRESERVE THE PUBLIC PEACE AND SAFETY IN THE CITY OF AUSTIN AND FOR THE RESIDENTS THEREOF BY ESTABLISHING A CURFEW APPLICABLE TO JUVENILES AND REGULATING THEIR PRESENCE IN PUBLIC STREETS AND OTHER PLACES AND DEFINING THE DUTIES OF PARENTS AND GUARDIANS OF JUVENILES AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF.

BE IT ORDAINED BY THE CITY COUNCIL OF AUSTIN ARKANSAS:

SECTION 1. FINDING PURPOSE: The City Council of the City of Austin hereby finds there has been a significant breakdown in the supervision normally provided by certain parents and guidance for juveniles under eighteen (18) years of age resulting in juveniles being involved in a wide range of unacceptable behavior including vandalism, noisy and rowdy behavior, breaking and entering, public drinking and littering, harassment of residents, and more serious violent crime.

The City Council further finds that the offensive activities of the juveniles are not easily controlled by existing laws and ordinances because the activities are concealed whenever police officers are present and that the establishment of reasonable curfew regulations will enable the community to better control the free and unobstructed access to the streets and public places by the majority of residents and will enable the police to act reasonably and fairly to prevent the violation of laws and ordinances by juveniles.

The City Council further finds and has determined that a curfew meets a very real local need and that curfew ordinances in other communities have been a factor in minimizing juvenile delinquency. A curfew in Austin is particularly appropriate in view of the basic residential nature of the community and the sense of the community that there is a proper time for the cessation of outdoor activities of juveniles. That this attitude of the community is reflected in the curfew hours declared by this Ordinance which takes into consideration the danger hours for nocturnal crime.

Austin is basically a family community. Parental responsibility for the whereabouts of children is the accepted norm by a substantial majority of the community. Legal sanctions to enforce such responsibility have had demonstrated effectiveness in many communities over the years. The City Council has determined that as parental control increases there is a likelihood that juvenile delinquency decreases and that there is a need for nocturnal curfew for juveniles in Austin and that the establishment of a curfew applicable to juveniles will reinforce the primary authority and responsibility of parents and guardians over juveniles in their care and custody.

SECTION 2. DEFINITIONS: For the purpose of the Curfew Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the plural number include the singular and words in the singular number include the plural. The word "shall" is always mandatory and not merely directory.

- (A) JUVENILE OR MINOR is any person under the age of eighteen (18) or, in equivalence phrasing often herein employed, any person seventeen (17) years of age or less.
- (B) PARENT is any person having custody of a juvenile (I) as a natural or adoptive parent, (II) as a legal guardian, (III) as a person who stands in loco parents, (IV) as a person to whom legal custody has been given by order of a court of competent jurisdiction.
- (C) REMAIN means to stay behind, to tarry and to stay unnecessarily upon the streets, including the congregating of groups (or of interacting minors) totaling three or more persons in which any juvenile involved would not be using the streets for ordinary or serious purposes such as mere passage or going home. To implement that thought with additional precision and precaution, numerous exceptions are expressly defined in this Ordinance so that this is not a mere prohibition of presence of juveniles. More and more exceptions become available with increasing years and advancing maturity as appropriate in the interest of reasonable regulations.
- (D) STREET is a way or place, of whatever nature, open to the use of the public as a matter of right for purposes of vehicular travel or in the case of a sidewalk thereof for pedestrian travel. The term street includes that legal right of way, including but not limited to traffic lanes, the curb, the sidewalks whether paved or unpaved, and any grass plots other grounds found within the legal right of way of a street. The term street applies irrespective of what it be called or formally named, whether alley, avenue, court, road or otherwise. The term street shall also include

areas of public housing developments, and similar areas that are open to the use of the public.

- (E) TIME OF DAY OR NIGHT referred to herein is based upon the prevailing standard of time, whether Central Standard Time or Central Daylight Savings Time, generally observed at that hour by the public in the City, prima facie the time then observed in the city police station.
- (F) YEARS OF AGE continues from one birthday, such as the seventeenth to (but not including the day of) the next, such as the eighteenth birthday, making it clear that seventeen or less years of age be treated as equivalent to the phrase "under eighteen years of age."

SECTION 3. CURFEW FOR JUVENILES: It shall be unlawful for any person seventeen (17) years or less years of age (under eighteen (18)) to be or remain on or upon the streets within the City of Austin:

- (A) At night during the period ending at 6:00 A.M. and beginning at 11:00 P.M. on Friday and Saturday nights, and 10:00 P.M. on all other nights.
- (B) During the day between the hours of 8:30 A.M. and 3:00 P.M. on Monday, Tuesday, Wednesday, Thursday, or Friday.

SECTION 4. EXCEPTIONS: In the following exceptional cases a minor on a City street during the nocturnal hours prescribed for minors shall not however, be considered in violation of the Curfew Ordinance.

- (A) When accompanied by a parent of such minor.
- (B) When accompanied by an adult, at least twenty-one (21) years of age, who is not the parent and who is authorized by a parent of such minor to take said parent's place in accompanying said minor for a designated period of time and purpose within a specified area.
- (C) When exercising First Amendment rights protected by the United States

SECTION 10. REPEALER: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 11. EMERGENCY: That it is hereby determined by the City Council of the City of Austin that the passage of this ordinance is necessary for the preservation of the public health, safety and welfare of the citizens of Austin, THEREFORE, an emergency is hereby declared to exist and this Ordinance shall be in full force and effect from and after the date of its adoption subject to the limitations set forth in Section 9.

PASSED: *May 18-1998*

APPROVED:

5-18-98
DATE

Bobbie J. Horn
MAYOR BOBBIE JEAN HORN

- (G) When the minor is in a motor vehicle for the purpose of interstate travel, either through, beginning or ending in Austin.
- (H) With respect to the daytime hours between 8:30 A.M. and 3:00 P.M. on Monday, Tuesday, Wednesday, Thursday, or Friday only, it is a defense that the public or private school which the minor attends was not in session, that the minor is being home schooled in accordance with Arkansas law and a recess has been declared by the home school teacher, that the minor is a high school graduate or has an equivalent certification, or that the minor is on an excused absence from his or her place of schooling, provided that a disciplinary suspension or expulsion is not deemed an excused absence for the purposes of this Ordinance.

SECTION 5. PARENTAL RESPONSIBILITY: It shall be unlawful for a parent of a juvenile to permit or allow the juvenile to be or remain upon any city street under circumstances not constituting an exception to, or otherwise beyond the scope of, the Curfew Ordinance. This Ordinance is intended to hold neglectful or careless parents to a reasonable community standard of parental responsibility through an objective test. It shall be no defense that a parent was indifferent to the activities or conduct or whereabouts of such juvenile.

- (A) Police procedures shall be refined in light of experience and may provide that the police officer may deliver to a parent or guardian thereof a juvenile under appropriate circumstances.
- (B) When a parent or guardian has come to take charge of the juvenile, and the appropriate information has been recorded, the juvenile shall be released to the custody of such parent. If the parent cannot be located or fails to take charge of the juvenile, then the juvenile shall be released in accordance with Arkansas and Federal Law.
- (C) In the case of a first violation by a juvenile, the Police Department shall by certified mail or direct service, send and/or deliver to a parent written notice of

the right of such exercise by first delivering to the person designated by the Chief of Police to receive such information, at the Police Department located at 202 North Poole, a written communication, signed by the juvenile and countersigned by a parent of the juvenile with their home address and telephone number, specifying when, where and in what manner the juvenile will be on the streets at night (during hours when the Curfew Ordinance is otherwise applicable to said minor) in the exercise of a First Amendment Right.

- (D) In case of reasonable necessity for a juvenile remaining on the streets, but only after the juvenile's parent has communicated to the person designated by the Chief of Police to receive such notifications the facts establishing the reasonable necessity relating to specified streets at a designated time for a described purpose including points of origin and destination. A copy of the communication, or of the police record thereof, duly certified by the Chief of Police to be correct, with an appropriate notation of the time it was received and of the names and addresses of the parent and juvenile, shall be admissible evidence.
- (E) When returning home from and within one (1) hour after the termination of a school or city sponsored activity, or an activity of a religious or other voluntary association, of which prior notice, indicating the place and probable time of termination, has been given in writing, to and duly filed for immediate reference by, the person designated by the Chief of Police on duty at the police station, this encouraging, as in other exceptional situations, responsible conduct on the part of juveniles involved in such activities and striking a fair balance for any conflicting interests.
- (F) When engaging in the duties of bona fide employment or traveling directly, without undue delay or detour from home to the place of employment, or from the place of employment to the home.

the violation with a warning that any subsequent violation will result in the
enforcement of the Curfew Ordinance, including enforcement of parental
responsibility and of applicable penalties.

SECTION 6. ENFORCEMENT PROCEDURE: If a police officer reasonable believes
that a juvenile is on the streets in violation of the Curfew Ordinance, the officer shall notify the
juvenile that he or she is in violation of the ordinance and shall require the juvenile to provide his or
her name, address and telephone number and how to contact his or her parent or guardian.

In determining the age of the juvenile and in the absence of convincing evidence, a police
officer shall use his or her best judgment in determining age.

SECTION 7. PENALTIES:

(A) If, after the warning notice pursuant to Section 5 of a first violation by a juvenile, a
parent violates Section 6 (in connection with a second violation by the juvenile), this shall be treated
as a first offense by the parent. For parental offenses, a parent may be fined not less than \$100.00, nor
more than \$500.00.

(B) Any juvenile who shall violate any of the provisions of the Curfew Ordinance more
than three times shall be reported by the Chief of Police to the juvenile authorities as a juvenile in
need of supervision and the County Prosecuting Attorney and/or the Arkansas Department of Human
Services and/or other appropriate authorities.

SECTION 8. CONSTRUCTION: Severability is intended throughout and within the
provisions of the Curfew Ordinance. If any provision, including any exception, part, phrase, or term,
or the application thereof to any person or circumstances is held invalid, the application to other
persons or circumstances shall not be affected thereby and the validity of the Curfew Ordinance in any
and all other respects shall not be affected thereby.

SECTION 9. DATES OF OPERATION: In order to allow implementation of administrative
procedures and requirements of this Ordinance by the Police Department the first date and time of
the curfew shall be Mon 22, 1998, at 11 pm O'Clock M.