

No. 605

AN ORDINANCE FOR THE CITY OF WEST COLUMBIA, TEXAS, ACKNOWLEDGING THE REVIEW OF ARTICLE II, CHAPTER 12 OF THE CODE OF ORDINANCES ENTITLED JUVENILE CURFEW, THE CONDUCT OF A PUBLIC HEARING ON THE NEED TO CONTINUE THAT CURFEW AND THE ACTION OF THE COUNCIL VOTING TO RATIFY, CONFIRM AND CONTINUE THAT CURFEW WITH RESPECT TO PERSONS UNDER EIGHTEEN (18) YEARS OF AGE, REGULATING THE USE OF STREETS DURING CERTAIN NIGHTTIME HOURS, AND PROVIDING FOR RELATED MATTERS SUCH AS PERMITS, REGULATIONS AND EXCEPTIONS; PROVIDING FOR THE REPEAL OF ALL ORDINANCES, RESOLUTIONS OR INFORMAL POLICIES OF THE CITY WHICH ARE IN ANY MANNER INCONSISTENT OR IN CONFLICT WITH THIS ORDINANCE; CONTAINING A SEVERABILITY CLAUSE; PROVIDING THAT ANY VIOLATION OF THIS ORDINANCE CONSTITUTES A MISDEMEANOR PUNISHABLE BY A FINE OF NOT TO EXCEED \$500.00; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of West Columbia has in its Code of Ordinances, Article II of Chapter 12 of the Code of Ordinances, entitled Juvenile Curfew which provides, among other things, for continuing evaluation and review; and

WHEREAS, Section 370.002 of the Texas Local Government Code provides for the review of juvenile curfew ordinances every three years and the conduct of public hearings with respect to the need to continue those provisions; and

WHEREAS, the City Council of the City of West Columbia has conducted such review including investigation and report by the West Columbia Police Department and has conducted a public hearing; and

WHEREAS, it is the consensus of the City Council that the juvenile curfew should be ratified, confirmed and continued as set forth in Article II, Chapter 12 of the Code of Ordinances, without modification;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL CITY OF WEST COLUMBIA, TEXAS:

Section 1

Article II of Chapter 12 of the Code of Ordinances of the City of West Columbia, Texas entitled "Juvenile Curfew" shall be and is hereby ratified, confirmed and continued following review and a public hearing to read as follows:

Sec. 12-30. Definitions

For the purposes of this Article, the following terms shall mean and include the following definitions:

- (a)** CITY is the City of West Columbia, Brazoria County, Texas
- (b)** CURFEW HOURS means:
 - (1)** Night time Curfew for Juveniles
 - (i)** 11:00 P.M. to 6:00 A.M. for juveniles 15 or more years of age on Sunday through Thursday and 12:01 A.M. (midnight) to 6:00 A.M. Friday and Saturday
 - (ii)** and 10:00 P.M. to 6:00 A.M. for juveniles 14 or less years of age on Sunday through Saturday
- (c)** JUVENILE means any person under the age of 17 years.
- (d)** PARENT means a person who is:
 - (1)** a natural parent, adoptive parent, or step-parent of another person; or
 - (2)** at least 18 years of age and authorized by a parent or guardian to have the care and custody of a juvenile.
- (e)** GUARDIAN means:
 - (1)** a person who, under court order, is the guardian of the person if a juvenile; or
 - (2)** a public or private agency with whom a juvenile has been placed by court.
- (f)** 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.
- (g)** 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.

(h) 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.

(i) 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 street, highways, and common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

(j) 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 premises.

(k) 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 bodily member or organ.

(l) STREET means, a way or place of whatsoever 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 the legal right-of-way, including but not limited to the cartway or traffic lanes, the curb, the sidewalks whether paved or unpaved, and any grass plots or other grounds found within the legal right-of-way of a street. The term street is implied irrespective of what it is called or formally named whether alley, avenue, court, road or otherwise.

(m) Year of age continues from one birthday, such as the sixteenth to (but not including the day of) the next, such as the seventeenth birthday, making it clear that 16 or less years of age is herein treated as equivalent to the phrase, under 17 years of age.

Sec. 12-31. Curfew for Juveniles

It shall be unlawful for any juvenile to be or knowingly remain, walk, run, stand, drive or ride about, in or upon any public place or street of the City at night during the period ending at 6:00 A.M. and beginning

(a) at 10:00 P.M. for juveniles 14 years of age or less;

(b) at 11:00 P.M. for juveniles 15 years of age or more on Sunday through Thursdays at midnight on Fridays and Saturdays.

(Ord. No. 473, §1, 1/11/99, language added)

Section 2

Sec. 12-32. Exceptions

In the following exceptional cases a juvenile on a City street during the nocturnal hours for which Sec. 12-31. is intended to provide the maximum limits of regulation (and a clear general guide for juveniles, their parents and their fellow citizens) shall not, however, be considered in violation of this chapter:

(a) When accompanied by a parent of such juvenile.

(b) When accompanied by adult authorized by a parent of such juvenile to take said parent's place in accompanying said juvenile for a designated period of time.

(c) When 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. Such juvenile shall evidence the bona fides of such exercise by first delivering to the Chief of Police's office, at the West Columbia Police Department, a written communication, signed by such juvenile and countersigned if practicable by a parent of such juvenile with their home address and telephone number, addressed to the Chief of Police of the City specifying when, where and in what manner said juvenile will be on the streets at night (during hours when the Curfew Ordinance is otherwise applicable to said juvenile) in the exercise of a First Amendment right specified in such communication.

(d) In case of reasonable necessity but only after such juvenile's parent has communicated to the City Police station personnel the facts establishing such reasonable necessity relating to specified streets at a designated time in a described purpose including points of origin and destination. A copy of said communication, or of the policy 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 address of such parent and juvenile, shall be admissible evidence.

(e) When the juvenile is on the sidewalk of the place where such juvenile resides, or on the sidewalk of either next-door neighbor not communicating an objection to the police officer.

(f) When returning home by a direct route from (and within 30 minutes of the termination of) a school activity, or an activity of a religious or other voluntary association.

(g) When authorized, by special permit from the Chief of Police, carried on the person of the juvenile thus authorized, as follows: When normal or necessary nighttime activities of a juvenile, particularly a juvenile well along the road to maturity, may be inadequately provided for by other provisions of this Ordinance, then a request may be had to the Chief of Police of the City, either for a regulation as provided in Subsection (h) or for a special permit as the circumstances warrant. Upon the Chief of Police's finding of necessity for the use of the streets to the extent warranted by a written application by a juvenile and by a parent of such juvenile and by a parent of such juvenile if feasible stating:

- (1) the home, age, and address of such juvenile;
- (2) the name, address and telephone number of parent thereof;
- (3) the height, weight, sex, color of eyes and hair and other physical characteristics of such juvenile;
- (4) the reason or necessity which requires each juvenile to remain upon the streets during the curfew hours otherwise policeable;
- (5) the street or route and the beginning and ending of the period of time involved by date and hour, the Chief of Police may grant a permit in writing for the use by such juvenile of such streets at such hours as in the Chief of Police's opinion may reasonably be necessary. In an emergency this may be handled by telephone, or other effective communication, with a corresponding record being made contemporaneously, either to the Chief of Police or if unavailable, to a police officer authorized by the Chief of Police to act on his behalf in an emergency, at the police station;

(h) When authorized, by regulation issued by the Chief of Police, in other similar cases for reasonable necessity, similarly handled but adapted to normal or necessary night-time activities of more juveniles than can readily be dealt with on an individual special permit basis. Normally such regulation by the Chief of Police permitting use of the streets should be issued sufficiently in advance to permit appropriate publicity through news media and through other agencies such as the schools, and shall define the activity, the scope of the use of the streets permitted, the period of time involved not to extend more than 30 minutes beyond the time for

termination of such activity, and the reason for attending that such regulation is reasonably necessary and is consistent with the public interest and the purposes of this Curfew Ordinance.

(i) When the juvenile carries a certified card of employment renewable each calendar month when the current facts so warranty, dated or re-issued not more than 45 days previously, signed by the Chief of Police and briefly identifying the juvenile, the addresses of his home and of his place of employment, and his hours of employment.

(j) When the juvenile is, with parental consent, in a motor vehicle. This contemplates normal travel. From excess of caution, this clearly exempts bona fide interstate movement through West Columbia. This also exempts interstate travel beginning or ending in West Columbia.

(k) When the juvenile is on an errand directed by his or her parent or guardian.

(l) When the juvenile is emancipated through marriage, through removal of the disabilities of minority by Court order, or by other operation of law.

Each of the foregoing exceptions, and their several limitations such as provisions for notification, are severable, as hereinafter provided. Additionally, the maturity of juveniles enrolled respectively in elementary, junior high and high schools will be considered by Council as warranted by future experience illuminated by the views of student government association, school personnel, citizens, associations, ward, precinct and neighborhood spokesmen, parents, officers and persons in authority concerned positively with juveniles as well as with juvenile delinquency.

(Ord. No. 473, §2, 1/11/99, language in para. (g), initial and final paras. amended, paras. (k) and (l) added.)

Sec. 12-33. Parental and Commercial Establishment Responsibility

(a) It shall be unlawful for a parent having legal custody of a juvenile knowingly to permit or by inefficient control to allow such 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. The term "knowingly" includes knowledge which a parent should reasonably be expected to have concerning the whereabouts of a juvenile in that parent's legal custody. It is intended to continue to keep neglectful or careless parents up to a reasonable community standard of parental responsibility through an objective test. It shall, a fortiori, be no defense that a parent was completely indifferent to the activities or conduct or whereabouts of such juvenile.

(b) It shall be unlawful for the owner or operator of a commercial establishment to knowingly allow a juvenile to remain upon such business premises during the hours of curfew established in this ordinance beyond the time necessary to conduct an expected activity. It shall be no defense to this section that a juvenile made a purchase upon arrival and departed immediately thereafter. It shall be a defense to prosecution under this section that the owner or operator of such commercial establishment has promptly notified the Police Department dispatcher that a juvenile or juveniles who are present on the premises after hours have refused to depart. A copy of the police record of such notification, duly certified by the Chief of Police to be correct, with an appropriate notation of the time it was received, shall be admissible as evidence in the Municipal Court of the City as prima facie proof of the truth of all facts set forth therein.

Sec. 12-34. Police Procedures

A police officer of the City, upon finding or having attention called to any juvenile on the streets in prima facie violation of this Chapter normally shall take the juvenile to the City Police station where a parent shall immediately be notified to come for such juvenile. This is intended to permit ascertainment, under constitutional safeguards, of relevant facts, and to centralize responsibility in the officer there and then on duty for accurate, effective, fair, impartial and uniform enforcement, and recording, thus making available the best facilities and access to information and records. In the absence of convincing evidence such as a birth certificate, an officer on the street shall in the first instance use his or her best judgment in determining age.

(a) Police procedures shall constantly be refined in the light of experience and may provide, inter alia, that the officer may deliver to a parent thereof the juvenile under appropriate circumstances, for example a juvenile of tender age near home whose identity and address may readily be ascertained or are known.

(b) In any event such officer shall within 24 hours file a written report with the Chief of Police.

(c) When a parent, immediately called, 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 to the juvenile authorities except to the extent that in accordance with police regulation, approved in advance by juvenile authorities, the juvenile may temporarily be entrusted to a relative, neighbor or other person who will on behalf of a parent assume the responsibility of caring for the juvenile pending the availability or arrival of a parent.

(d) In the case of a first violation by a juvenile the Chief of Police shall by certified mail, send to a parent written notice of said violation with a warning that any

subsequent violation will result in full enforcement of the Curfew Ordinance, including enforcement of parental responsibility and of applicable penalties.

Sec. 12-35. Penalties

Prevailing community standards as to when juveniles should be off the streets, reflected in this Chapter, are hereby undergirded with the following legal sanctions.

(a) A juvenile who violates a provision of the 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.

(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 an agency or organization whose purpose it is to take charge of incorrigibles and delinquents and proceedings shall then be taken under the Juvenile Court for the treatment, supervision and rehabilitation of such juvenile.

(c) For such first parental offense a parent shall be fined not less than \$25.00, e.g., and not more than \$500.00 and for each subsequent offense by a parent the minimum fine shall be increased by an additional \$25.00, e.g., \$50.00 for the second, \$75.00 for the third offense up to a maximum of \$500.00. The Municipal Judge, upon finding a parent guilty, shall sentence the parent to pay such fine and the costs of prosecution and shall assess any other punishment available to him under the laws of the State of Texas.

(d) A like procedure, before the juvenile authorities, shall be followed in any case where the imposing of a fine or fines upon a parent shall not be effective, or where for any other reason the provisions of the Curfew Ordinance cannot be made effective by the imposing of penalties under this Section 12-35.

(e) The Municipal Court Judge may transfer to the appropriate juvenile authorities any juvenile offender, whether for a first offense or subsequent offense, where said Judge determines there is a real need for supervision of said juvenile.

Sec. 12-36. Construction

Severability is intended throughout and within the provisions of this Chapter. If any provision, including inter alia, any exception, part, phrase, or term or the application thereof to any person or circumstance is held invalid. The application to other persons or circumstances shall not be affected thereby and the validity of this

Chapter in any and all other respects shall not be affected thereby. From excess of caution, the Chief of Police is authorized to give advisory opinions in writing or immediately reduced to writing, which shall be binding, and shall be adhered to by the Police until the ordinance is amended in such respect, interpreting terms, phrases, parts or any provisions. Normally such advisory opinions shall be in response to good faith signed letters addressed to him at the City Hall, questioning as (a) ambiguous, (b) as having a potentially chilling effect on constitutional rights specifically invoked, or (c) as otherwise invalid, in all three categories with respect to proposed conduct definitely described. This administrative remedy must be exhausted prior to presenting to any court a question in any of said three categories. City Council does not intend a result that is absurd, impossible of prosecution or unreasonable. It is intended that this Chapter be held not applicable in such cases, if any, where its application would be unconstitutional. A constitutional construction is intended and shall be given. Council does not intend to violate the Constitution of the State of Texas or the Constitution of the United States of America.

Sec. 12-37. Continuing Evaluation

City Council will continue its evaluation and updating of this Chapter.

(a) Accordingly, there shall be compiled and informally reported to City Council through effective channels (such as the normal monthly distribution by the City Manager, to each Council person, the Chief of Police and the City Attorney of noteworthy material) all exceptional cases hereunder of reasonable necessity, the notices of school and other activities, the Chief of Police's special permits and the Chief of Police's regulations hereinbefore authorized, and the Chief of Police's advisory opinions, for consideration by the City Council in further updating and continuing evaluation of this Chapter.

(b) For the same reasons, as well as for the implementation beyond these legal aspects of the basic purposes hereof, the Chief of Police and City Council in coordinated efforts shall work with existing, and may organize voluntary groups, and shall seek volunteer leadership, in programs of research and of action dealing constructively on neighborhood and local bases, with juvenile delinquency, and the prevention, control or containment, thereof, in all its implications and with practicable steps toward the good life, and better life, for juveniles 16 or less years of age, and with the working of this Chapter, community-wide and in individual cases, as one much needed legal goal toward that end as well as for continuing present protection of juveniles and of other persons, and of property and other interests, important to the welfare of the people of the City of West Columbia.

(Ord. No. 429, §1, 9/12/94, added Art II.)

Section 3

Any and all rules, ordinances, police regulations, resolutions, and/or policies of the City of West Columbia, whether written, or otherwise, which are in any manner in conflict with or inconsistent with this ordinance, shall be and are hereby repealed to the extent of such conflict and/or inconsistency.

Section 4

It is hereby declared to be the intention of the City Council that several provisions of this ordinance are severable, and if any court of competent jurisdiction enters a final order which holds that any section, sub-section, sentence, clause, phrase, or other portion of this ordinance invalid, illegal, or otherwise unenforceable, then any such portion shall be deemed a separate, distinct and independent provision, and any such ruling shall not effect any other provisions of this ordinance which are not specifically designated as being illegal, invalid or unenforceable.

Section 5

Violation of the terms and provisions of this ordinance shall constitute a misdemeanor and shall, upon conviction, be punishable by a fine of not to exceed \$500.00 in accordance with the provisions of Section 12-35 of the Code of Ordinances of the City of West Columbia.

Section 6

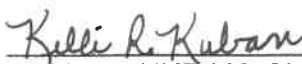
This ordinance shall be effective upon the last to occur of each of the following:

- (a) Its passage and approval; and
- (b) The publication of its caption as required by law.

PASSED and APPROVED this the 9th day of January, 2012.


LAURIE B. KINCANNON, Mayor

ATTEST:


KELLI R. KUBAN, City Secretary