

ORDINANCE NUMBER 901

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS, ADOPTING SECTION 131.01 OF THE CODE OF ORDINANCES; RELATING TO JUVENILE CURFEW REGULATIONS; PROVIDING THAT THE VIOLATION OF SUCH REGULATIONS BY MINORS, PARENTS, MINORS OR THE OWNER, OPERATOR OR EMPLOYEE OF A BUSINESS ESTABLISHMENT CONSTITUTES AN OFFENSE; PROVIDING FOR ENFORCEMENT, AND PENALTIES FOR VIOLATION, OF THE REGULATIONS; PROVIDING FOR DEFENSES TO THE OFFENSES ESTABLISHED; PROVIDING FOR PUBLICATION AND PROVIDING FOR SEVERABILITY.

WHEREAS, the City has complied with the notice requirements of the Charter of the City of Burkburnett.

WHEREAS, the Board of Commissioners of the City of Burkburnett, Texas, in accordance with TEX. LOC. GOVT. CODE §370.002, has reviewed the need for an ordinance relating to juvenile curfews to determine its effect on the City and on the problems such ordinance would be intended to remedy, has conducted a public hearing on the need to continue a curfew and has determined that there is a need to adopt the juvenile curfew regulations set forth in this Ordinance; and

WHEREAS, the Board of Commissioners finds that persons under the age of seventeen (17) are particularly susceptible by their lack of maturity and experience to participation in unlawful, and gang-related, activities and to becoming victims of older perpetrators of crime; and

WHEREAS, the City of Burkburnett 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 curfew for those under the age of seventeen (17) will promote public health, safety, and the general welfare of the City, will help to attain the foregoing objectives and will diminish the undesirable impact of such conduct on the citizens of the City of Burkburnett.

WHEREAS, this ordinance will expire on July 15, 2019.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS:

SECTION 1. That Section 131.01 to be entitled “Curfew Hours for Minors” is hereby adopted, the same to read as follows:

“Section 131.01 Curfew Hours for Minors”

(A) **Definitions.** In this section:

(1) ***Curfew Hours*** means that period of time between:

- (a) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday, until 6:00 a.m. of the following day; and
- (b) 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday.

(2) ***Emergency*** means an unforeseen combination of circumstances or the resulting state that calls for immediate action to prevent serious bodily injury or loss of life and includes, but is not limited to, a fire, a natural disaster, and automobile accident.

(3) ***Establishment*** means any privately owned place of business to which the public is invited or generally has access, and the “premises” of an establishment includes the structure where the business is operated, any structures adjacent thereto and any parking lot, sidewalk or common area associated with a particular business. An establishment includes any place of amusement or entertainment.

(4) ***Guardian*** means a person or public or private agency who has been appointed as the guardian of the person of a minor child by a court of this or any other State.

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

(6) ***Operator*** means an individual, firm, association, partnership, or corporation, operating, managing, or conducting any establishment. The term includes the member or partners of an association or partnership and the officers of a corporation.

(7) ***Parent*** means a person:

- (a) who is a natural or adoptive parent or step-parent of a minor; or,
- (b) who has been appointed by a court as a conservator of a minor and has the duty of care, control, protection, and reasonable discipline of a minor at the time of any alleged violation of this section, or
- (c) who is at least eighteen (18) years of age and authorized by a parent, guardian or conservator of the minor to have the care or custody of a minor at the time of any alleged violation of this section.

(8) ***Public Place*** means any place to which the public or a substantial group of the public generally has access and includes, but is not limited to streets, highways, sidewalks, parks, vacant lots and parking lots (whether owned by a private person or by a governmental entity), any part of school premises including athletic fields or facilities, athletic fields or facilities (whether owned or operated by private persons or organizations

or by a governmental entity), public swimming pools, and the common areas of hospitals, apartment houses, office building, 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 or impairment of the function of any bodily member or organ.

(B) Offenses

- (1) A minor commits an offense if he or she is present, or remains, in any public place or on the premises of any establishment within the city during curfew hours, including any public place or the premises of any establishment which was not open to the public at the time of any alleged violation of this subsection.
- (2) A parent or guardian of a minor commits an offense if the parent or guardian knowingly permits, or by insufficient control allows, a minor to remain in any public place or on the premises of any establishment within the city during curfew hours including any public place or the premises of any establishment which was not open to the public at the time of any alleged violation of this subsection.
- (3) The owner, operator, or any employee of an establishment commits an offense if he or she knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

(C) Defenses

- (1) It is a defense to prosecution under Subsection (B) that the minor was:
 - (a) accompanied by the minor's parent or guardian;
 - (b) in a motor vehicle involved in interstate travel;
 - (c) engaged in an employment activity or going to or returning home from an employment activity, without any detour or stop;
 - (d) involved in an emergency;
 - (e) on the sidewalk or front yard 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;
 - (f) attending an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Burkburnett, a civic organization, or other similar entity that takes responsibility for the minor, or going to or returning home from any such event without any detour or stop;

- (g) exercising First Amendment rights protected by the United States Constitution;
 - (h) married or had disabilities of minority removed in accordance with Chapter 31 of the TEXAS FAMILY CODE; or
 - (i) attending an activity meeting the following criteria: (i) the activity is supervised by adult sponsors who take responsibility for the minors in attendance so that a minor may not leave the premises where the activity is held without a parent or guardian who gave permission for the minor to attend the activity, and (ii) all ingress and egress to the facility where the activity is held is controlled by the adult sponsor(s) throughout the duration of the activity to ensure that all minors are in the premises where the activity is held.
- (2) It is a defense to prosecution under Subsection (B)(3) 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.** 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 officers 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 Subsection (C) is present.

(E) **Penalties**

- (1) A person who violates a provision of this section 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 Subsection (B) (1) of this section and shall refer the minor to juvenile court.

SECTION 2. That should any section, paragraph, sentence, clause, phrase, or word of this ordinance be declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall not be affected thereby.

SECTION 3. That this ordinance was adopted at a meeting which was open to the public and preceded by proper notice as required by Chapter 551 of the Texas Government Code (the Open Meetings Act).

SECTION 4. This ordinance will expire on July 15, 2019.

SECTION 5. This ordinance shall become effective following its publication as required by Article IV, Section 20 of the Charter of the City of Burkburnett.

SECTION 6. The City Clerk is hereby authorized and directed to cause publication of this ordinance as required by Article IV, Section 20 of the Charter of the City of Burkburnett.

PASSED AND APPROVED on this 11th day of July 2016.

Carl Law, Mayor

ATTEST:

Janelle Dolan, City Clerk