

ORDINANCE NO. 2012-04

**AN ORDINANCE ESTABLISHING CURFEWS FOR MINORS;
PROVIDING DEFINITIONS; PROVIDING DEFENSES AND
EXCEPTIONS; PROVIDING PENALTIES; AND PROVIDING OPEN
MEETINGS, SEVERABILITY AND RELATED CLAUSES.**

WHEREAS, the City Council of the City of Burnet, Texas finds the establishment of reasonable curfew hours for minors to be necessary and reasonable for the protection of such minors and the public health, safety and welfare;

WHEREAS, the City currently imposes a curfew on juveniles within the city limits;
and

WHEREAS, the City has conducted a public hearing on the need to continue the juvenile curfew ordinance; and

WHEREAS, the City has reviewed the effect of the juvenile ordinance; and

WHEREAS, the City finds that continuation of its juvenile curfew ordinance will promote the public welfare;"

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

Section. 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section. 2. Curfew. Division 2, entitled "Curfew", Sections 70-36 through 70-41 of the Code of Ordinances of the City of Burnet having expired is hereby reaffirmed and readopted to remain in the Code of Ordinances and shall read as follows:

Sec. 70-36. Short Title. This Division shall be known and may be cited as the "Curfew Hours for Minors Ordinance."

Sec. 70-37. Definitions.

For the purposes of this division the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

Curfew hours means:

- (1) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday until 6:00 a.m. of the following day; and
- (2) 12:01 a.m. until 6:00 a.m. on any Friday or Saturday.

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.

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.

Guardian means:

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

Minor means any person under 17 years of age.

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.

Parent means a person who is:

- (1) A natural parent, adoptive parent or step-parent or another person; or
- (2) At least 18 years of age and authorized by a parent or guardian in writing to have the care and custody of a minor.

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.

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 the premises.

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.

Sec. 70-38. Curfew related offenses.

(a) A minor commits an offense if he remains in any public place or on the premises of any establishment within the city during curfew hours.

(b) A parent or guardian of a minor commits an offense if he knowingly permits, or by insufficient control allows, the minor to remain in any public place or on the premises of any establishment within the city during curfew hours.

(c) The owner, operator or any employee of an establishment commits an offense if he knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

Sec. 70-39. Exceptions and defenses.

(a) It is a defense to prosecution under section 70-38 that the minor was:

- (1) Accompanied by the minor's parent or guardian;
- (2) On a lawful errand at the direction of the minor's parent or guardian, without any detour or stop;
- (3) In a motor vehicle involved in interstate travel;
- (4) Engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
- (5) Involved in an emergency;

- (6) On the sidewalk abutting the minor's residence of a next-door neighbor if the neighbor did not complain to the police department about the minor's presence;
- (7) Attending an official school, religious or other recreational activity supervised by adults and sponsored by the city, 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, a civic organization; or another similar entity that takes responsibility for the minor;
- (8) 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
- (9) Married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code.

(b) It is a defense to prosecution under subsection 70-38(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 curfew hours and refused to leave.

Sec. 70-40. Enforcement.

Before taking any enforcement action under this division, 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 division unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in section 70-39 is present.

Sec. 70-41. Penalties.

(a) 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 \$500.00.

(b) When required by V.T.C.A, Family Code § 51.08, as amended, the municipal court shall waive original jurisdiction over a minor who violates subsection 70-38(a) of this division and shall refer the minor to juvenile court.

Section 3. Conflicting Ordinances. All ordinances or parts of ordinances inconsistent with or in conflict with this ordinance are hereby amended and repealed to the extent of such inconsistency or conflict.

Section 4. Severability. If any provision of this ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

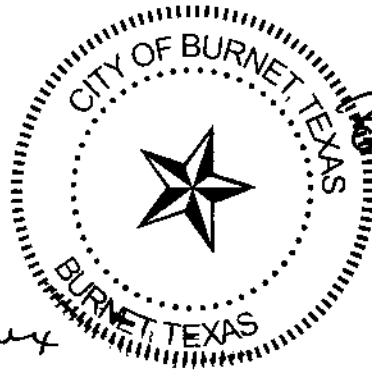
Section 5. Open Meetings. That it is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapt. 551, Loc. Gov't. Code.

Section 6. Effective Date. This ordinance shall take effect immediately upon its adoption by the City Council and publication as required by the Local Government Code.

PASSED AND APPROVED on First Reading this 14th day of February, 2012.

FINALLY PASSED AND APPROVED on this the 28th day of February, 2012.

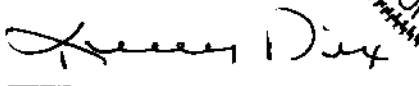
CITY OF BURNET, TEXAS





Gary Wideman, Mayor

ATTEST:



Kelly Dix, City Secretary