

**CITY OF FORNEY, TEXAS
ORDINANCE NO. 18-____**

AN ORDINANCE OF THE CITY OF FORNEY, TEXAS, AMENDING CHAPTER 8, OFFENSES AND NUISANCES, BY ADDING ARTICLE 8.10, YOUTH CURFEW; PROVIDING FOR CURFEW HOURS FOR MINORS IN THE CITY; MAKING FINDINGS; PROVIDING DEFINITIONS; REQUIRING THE CITY COUNCIL TO PERIODICALLY REVIEW THE EFFECTS OF THIS ORDINANCE ON THE COMMUNITY; PROVIDING THAT FAILURE BY THE CITY COUNCIL TO CONDUCT SUCH PERIODIC REVIEWS AND HEARINGS SHALL CAUSE THIS ORDINANCE TO EXPIRE; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINFS/REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR SAID ORDINANCE TO TAKE EFFECT FROM AND AFTER ITS DATE OF PUBLICATION.

WHEREAS, persons under the age of seventeen (17) years are particularly susceptible by their lack of maturity and experience to participate in unlawful activities and to be victims of older perpetrators of crime; and

WHEREAS, the City of Forney, Texas, 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, other local governments in the State of Texas that have adopted youth curfew ordinances generally have experienced a decrease in juvenile violence, and crime by persons under the age of seventeen (17) years; and

WHEREAS, statistics from other municipalities that have adopted juvenile curfew ordinances reflect a decrease in violent offenses committed against juveniles during curfew hours; and

WHEREAS, section 370.002 of the Texas Local Government Code, as amended, provides that the City Council of the City of Forney, Texas, before the third anniversary of the date of adoption of a juvenile curfew ordinance, is required to (1) review the ordinance's effect on the community and on the problems the ordinance was intended to remedy; (2) conduct a public hearings on the need to continue the juvenile curfew ordinance; and (3) abolish, continue, or modify the juvenile curfew ordinance; and

WHEREAS, a curfew for those under the age of 17 will be in the interest of the public health, safety, and general welfare of the public, will help to attain the foregoing objectives, and will help to diminish the undesirable impact of such conduct on the citizens of the City of Forney; and

WHEREAS, the passage of this ordinance is pursuant to the City of Forney's police power as stated in its Charter and as set forth in the laws and constitution of the State of Texas.

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

Section 1. FINDINGS INCORPORATED

The Council hereby finds that the statements set forth in the recitals of this Ordinance are true and correct, and the Council hereby incorporates such recitals as part of this Ordinance.

Section 2. CODE OF ORDINANCES, CHAPTER 8, OFFENSES AND NUISANCES

Chapter 8, Offenses and Nuisances, of the City of Forney Code of Ordinances is hereby amended to add Article 8.10, Youth Curfew, to be read as follows:

Section 8.10.001 Definitions

As used in this ordinance the following words and terms shall have the meanings respectively ascribed:

- (a) Curfew hours. 12:00 a.m. (Midnight) until 6:00 a.m. on Sunday, Monday, Tuesday, Wednesday, Thursday, Friday, or Saturday.
- (b) Emergency. An event that includes, but is not limited to, a fire, natural disaster, an automobile accident, or obtaining immediate medical care for another person.
- (c) Establishment. 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.
- (d) Guardian. Any person to whom custody of a minor has been given by a court order.
- (e) Minor. Any person under seventeen (17) years of age.
- (f) Operator. Any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes the members of partners of an association or partnership and the officers of a corporation.
- (g) Parent. A person who is the natural or adoptive parent of a person. As used herein, "parent" shall also include a court appointed guardian or other person eighteen (18) years of age or older, authorized by the parent, by a court order, or by the court appointed guardian to have the care and custody of a person.
- (h) Public Place. 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 building, transport facilities, and shops.
- (i) Remain. To stay or linger, or to fail to leave a premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.
- (j) Serious Bodily Injury. A 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.

Section 8.10.002 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.

Section 8.10.003 Defenses

- (a) It is a defense to prosecution under Section 8.10.002 that the minor was:
 - (1) Accompanied by the minor's parent or guardian;
 - (2) On an 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 or abutting the residence of a next-door neighbor if the neighbor did not complain to the police department about the minor's presence;
 - (7) Attending a recreational or social activity supervised by adults who take responsibility for the minors; and, sponsored by a school, the city, or a nonprofit organization that sponsors or provides recreational or social activities for minors; or, going to and returning home therefrom without any detour or stop;
 - (8) Attending a religious service, activity, or recreational or social activity sponsored or provided by a religious organization, or going to and returning therefrom without any detour or stop;
 - (9) 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
 - (10) Married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code, as amended.
- (b) It is a defense to prosecution under Section 8.10.002(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.

Section 8.10.004 Enforcement Procedure

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 officer 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 Section 8.10.003 is present.

Section 8.10.005 City Manager's Report on Effectiveness of Regulations

Before the third anniversary of the date of the adoption of this Section, the City Manager shall review this Section, report to the City Council, and make recommendations concerning the effectiveness of and need for this Section. The City Manager's report shall specifically include the following information:

- (1) The practicality of enforcing this Section and any problems with enforcement identified by the Police Department;
- (2) The impact of this Section on crime statistics, where available;
- (3) The number of persons successfully prosecuted for a violation of this Section; and
- (4) The City's cost of enforcing this Section.

Section 8.10.006 City Council Review of Regulations

Before the third anniversary of the date of the adoption of this Section, and every third year thereafter, the City Council, pursuant to Section 370.002 of the Texas Local Government Code, as amended, shall:

- (1) review the Section's effects on the community and on the problems the Section was intended to remedy;
- (2) conduct public hearings on the need to continue the Section; and
- (3) abolish, continue or modify the Section.

Failure by the City Council to act in accordance with this Section shall cause this Section to expire.

Section 8.10.007 Penalty

(a) A person who violates a provision of this division 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 Section 51.08 of the Texas Family Code, as amended, the municipal court shall waive original jurisdiction over a minor who violates Section 8.10.002(a) and shall refer the minor to juvenile court.

Section 3. SEVERABILITY CLAUSE

It is hereby declared to be the intention of the Council that the words, phrases, clauses, sentences, paragraphs and sections of this Ordinance are severable, and if any word, phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining words, phrases, clauses, sentences, paragraphs and sections of this Zoning Ordinance, since the same would have been enacted by the Council without the incorporation of any such unconstitutional word, phrase, clause, sentence, paragraph or section.

Section 4. SAVINGS CLAUSE

The Code of Ordinances shall be and remain in full force and effect save and except as amended by this Ordinance.

Section 5. REPEALER CLAUSE

Any provision of any prior ordinance of the City, whether codified or uncodified, which is in conflict with any provision of this Ordinance, is hereby repealed to the extent of the conflict, but all other provisions of the ordinances of the City, whether codified or uncodified, which are not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section 6. EFFECTIVE DATE

This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and Charter in such cases provide.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Forney, Texas, this ____ day of _____, 2018.

Rick Wilson, Mayor

ATTEST:

Dorothy Brooks, TRMC, CMC, City Secretary

APPROVED AS TO FORM:

Jon Thatcher, City Attorney