

ORDINANCE NO. 2010-15

AN ORDINANCE OF THE CITY OF MIDLOTHIAN, TEXAS, TO ADD SECTION 8.05.000 CURFEW HOURS FOR MINORS TO THE CODE OF ORDINANCES; PROVIDING A REPEALING CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF FIVE HUNDRED (\$500.00) DOLLARS FOR EACH OFFENSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, based upon the Ordinance's effects on the community and on the problems the Ordinance was intended to remedy, and after conducting public hearings, the City Council finds that it is in the best interest, health, safety and welfare of the City to implement a Juvenile Curfew Ordinance; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLOTHIAN, TEXAS:

SECTION 1. That the Code of Ordinances is hereby amended in part to add Article 8.05.000 Curfew Hours for Minors of the Code of Ordinances of the City of Midlothian to read as follows:

"Sec. 8.05.001. Curfew hours for minors.

(a) *Definitions.* In this article:

(1) *Curfew hours* means:

- a. 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 5:00 a.m. of the following day; and
- b. 12:01 a.m. until 5:00 a.m. on any Saturday or Sunday.

(2) *Emergency* means an unforeseen combination of circumstances or the resulting state that calls for immediate action. 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.

(3) *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.

(4) *Guardian* means:

- a. A person who, under court order is the guardian of the person of a minor;
or

b. A public or private agency with whom a minor has been placed by a court.

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

(6) *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.

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

a. A natural parent, adoptive parent, or step-parent of another person; or

b. At least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.

(8) *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.

(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 such person remains in any public place or on the premises of any establishment within the city during curfew hours.

(2) A parent or guardian of a minor commits an offense if such parent or guardian 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.

(3) The owner, operator or any employee of an establishment commits an offense if such owner, operator or employee 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. On an errand at the direction of the minor's parent or guardian, without any detour or stop;
- c. In a motor vehicle involved in interstate travel;
- d. Engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
- e. Involved in an emergency;
- f. 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;
- g. 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;
- h. Attending a religious service, activity, or a recreational or social activity sponsored or provided by a religious organization, or going to and returning therefrom without any detour or stop;
- i. 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
- j. Married or had been married or had disabilities of minority removed in accordance with chapter 31 of the Texas Family Code.

(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 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 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 \$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 all provisions of the ordinances of the City of Midlothian in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the City of Midlothian not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. That any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the of the City of Midlothian, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of Five Hundred dollars (\$500.00) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

SECTION 4. That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

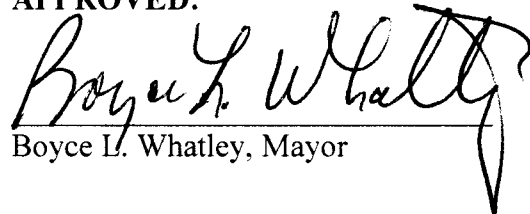
SECTION 5. That in accordance with Section 370.002 of the Texas Local Government Code the City Council will:

- (a) within three (3) years of the passage of this ordinance, the City shall review the ordinance's effects on the community and on problems the ordinance or order was intended to remedy;
- (b) conduct public hearings on the need to continue the ordinance; and
- (c) abolish, continue or modify the ordinance.
- (d) Failure to act in accordance with Subsections (a)-(c) shall cause the ordinance to expire.


SECTION 6. This Ordinance shall take effect immediately from and after its passage and the publication of the caption as the law and charter require in such cases.

DULY PASSED by the City Council of the City of Midlothian, Texas, on the 22nd day of June, 2010.

APPROVED:

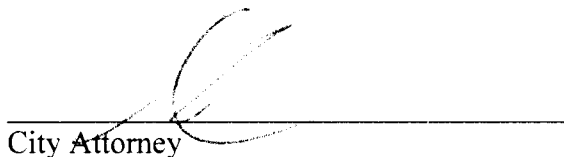

Boyce L. Whatley, Mayor

ATTEST:


Lou Jameson, City Secretary



APPROVED AS TO FORM:


City Attorney