

ORDINANCE NO. 95-02

AN ORDINANCE OF THE CITY OF WELLS, TEXAS RELATING TO THE ESTABLISHMENT OF CURFEW HOURS FOR MINORS; CREATING OFFENSES FOR MINORS AND PARENTS OF MINORS; PROVIDING AFFIRMATIVE DEFENSES; PROVIDING FOR ENFORCEMENT BY THE POLICE DEPARTMENT; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING A PENALTY.

WHEREAS, it is the intent of the City Council to protect the public health, safety, and welfare of its citizens and to protect juveniles in particular; and also to reduce the number of gang related and juvenile crimes within the City; and

WHEREAS, the City Council wishes to remove minors from the City streets between the hours when many crimes occur and to protect the rights of minors who for legitimate reasons are out during specified curfew hours and to use the least restrictive means to implement a curfew for minors; and

WHEREAS, it is important for parents to act responsibly with regard to their minor children; and they should retain the right to make decisions regarding his or her child in all other areas;

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

PART I INTRODUCES CURFEW HOURS FOR MINORS:

A. Definitions. In this section:

1. Chief of Police means the chief of police of the City of Wells or a designated representative.
2. Curfew hours means:
 - (a) 11:00 p.m. to 6:00 a.m. any day except Friday or Saturday; and
 - (b) 12:01 midnight to 6:00 a.m. Friday or Saturday.
3. Emergency means, 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.
4. 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.
5. Holding location means a place designated by the chief of police to which a minor taken into custody for a violation of this section will be delivered to await pick up by a parent or juvenile authorities.

6. Minor means any person under seventeen (17) years of age.
7. Parent means a person who is:
 - (a) a natural or adoptive parent of a minor;
 - (b) a court appointed guardian of a minor; or
 - (c) at least eighteen (18) years of age and authorized by a parent or court appointed guardian to have the care and custody of a minor.
8. Public place means any street, alley, highway, sidewalk, playground, park, plaza, building, or other place used by or open to the public.
9. Remain means to:
 - (a) linger or stay unnecessarily; 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.

B. Offenses.

1. 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.
2. A parent of a minor commits an offense if he or she 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. Defenses. It is a defense to prosecution that the minor was:

1. Accompanied by the minor's parent;
2. On an errand or other legitimate business at the direction of the minor's parent;
3. In a motor vehicle involved in interstate or intrastate travel;
4. Engaged in an employment activity, including but not limited to newspaper delivery;
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 officer about the minor's presence;
7. Attending an official school or religious activity or returning home from an official school or religious activity;

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.

D. Enforcement.

1. A police officer, upon finding a minor in violation of this ordinance, shall ascertain the name and address of the minor and shall inquire into the reasons for the minor being in a public place. If the police officer reasonably believes that the minor has violated the ordinance and that no defenses apply, a citation may be issued to the minor, and the police officer may order the minor to go promptly home by a direct route or may take the minor into custody and deliver the minor to a holding location.
2. When a minor is taken into custody under this ordinance the police department shall immediately notify a parent to pick up the minor at the holding location. After a parent arrives at a holding location and provides the information required by the chief of police to file an incident report, the minor shall be released into the custody of the parent. If a parent cannot be located or fails to take charge of the minor, the minor shall be released to the juvenile authorities.
3. If a minor is not taken into custody for a violation the police department shall notify a parent of the minor that the minor has violated this ordinance and may issue a citation to the minor's parent if reasonable grounds exist to believe that the parent has violated the ordinance.
4. A police officer shall, within 24 hours after finding a minor in violation of this ordinance, file a written report on the incident.

E. Penalties.

1. Any minor who violates this ordinance is guilty of a misdemeanor and upon conviction, shall be punishable by a fine not to exceed \$100.00;
2. A parent of a minor who violates this ordinance is guilty of a misdemeanor and upon conviction shall be punishable by a fine not to exceed \$500.00.

PART II

That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART III

That any person, firm or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not to exceed \$500.00 for each conviction. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall become effective upon its publication in the newspaper.

PASSED AND APPROVED this 14th day of August, 1995.

William M. Bailey
Mayor

ATTEST:

Lynette Bailey
City Secretary