

ORDINANCE NO. 20170615-099

AN ORDINANCE AMENDING CHAPTER 9-3 OF THE CITY CODE RELATING TO NON-EMERGENCY CURFEWS; AND CONTINUING AND READOPTING THE PROVISIONS OF CHAPTER 9-3.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Chapter 9-3 of the City Code, (*Non-Emergency Curfews*) is amended to read as follows:

CHAPTER 9-3. NON-EMERGENCY CURFEWS.

§ 9-3-1 DEFINITIONS.

In this chapter:

(1) **DIRECT ROUTE** means the shortest path a person may travel through a public place to reach the person's destination without a detour or additional stop at any other destination along the way.

(2) **EMERGENCY** means an unforeseen circumstance including a fire, natural disaster, automobile accident, or the need to obtain immediate medical care for another person.

(3) **ESTABLISHMENT** means a privately owned place of business operated for a profit to which the public is invited, including a place of amusement or entertainment.

(4) **JUVENILE** means a person under 17 years of age.

(5) **OPERATOR** means an individual, firm, association, partnership, or corporation operating, managing, or conducting an establishment, including a member or partner of an association or partnership and an officer of a corporation.

(6) **PARENT** means a person who is the natural or adoptive parent of a juvenile, including a court-appointed guardian or other person 21 years or age or older, authorized by a parent, court order, or court-appointed guardian to have the care and custody of a juvenile.

(7) **PUBLIC PLACE** means a public street, alley, highway, sidewalk, playground, park, plaza, building, or place used or open to a member of the public; or a building, business, or amusement or entertainment establishment.

(8) **RELIGIOUS ACTIVITY** means a function or event sponsored by a religious organization that has received tax exemption under Section 501(C)(3) of U.S.C.

§ 9-3-2 OFFENSES.

(A) A juvenile commits an offense if the juvenile is in a public place or on the premises of an establishment between 11:00 p.m. and 6:00 a.m. on any day.

~~(B) While school is in session, a juvenile commits an offense if the juvenile remains, walks, runs, idles, wanders, strolls, or aimlessly drives or rides about in or on a public place between 9:00 a.m. and 2:30 p.m. on Monday, Tuesday, Wednesday, Thursday or Friday.~~

(B)[(C)] A parent having custody of a juvenile commits a violation if the person knowingly allows the juvenile to be in violation of this chapter. A parent is presumed to knowingly allow or permit the juvenile to be in violation of this chapter if the juvenile has two previous convictions for violations of this chapter. For the purpose of this section a deferred adjudication is a conviction.

(C)[(D)] The owner, operator, or employee of an establishment commits an offense if the person knowingly allows a juvenile to remain on the premises of the establishment during curfew hours.

§ 9-3-3 DEFENSES.

(A) It is a defense to prosecution under Section 9-3-2 (*Offenses*) that:

- (1) the juvenile is accompanied by the juvenile's parent or spouse;
- (2) the juvenile is on an errand authorized by the juvenile's parent or spouse or made necessary by an emergency;
- (3) ~~except as provided in Subsection (C),~~ the juvenile is traveling by a direct route to the juvenile's home;
- (4) the juvenile is in a vehicle involved in transportation for which passage through the city is the most direct route;
- (5) the presence of the juvenile is connected with or required by a religious activity, educational activity, or a business, trade, profession, or occupation in which the juvenile is lawfully engaged;
- (6) ~~except as provided in Subsection (C),~~ the juvenile is on the sidewalk in front of the juvenile's residence or on the sidewalk of either adjacent neighbor who is not communicating an objection to the presence of the juvenile to a police officer; or

(7) the juvenile is exercising First Amendment rights protected by the United States Constitution, including the free exercise of religion, freedom of speech, and the right of assembly.

~~(B) It is a defense to a violation of Subsection 9-3-2(B) (Offenses) that:~~

~~——(1) the school that the juvenile attends is not in session;~~

~~——(2) the juvenile is a high school graduate or has an equivalent certification; or~~

~~——(3) the juvenile is on an excused absence from the juvenile's school.~~

~~(C) Subsections (A)(3) and (A)(6) are not defenses to a violation of Subsection 9-3-2(B) (Offenses).~~

~~(B)[(D)]~~ It is a defense to prosecution under Subsection 9-3-2 ~~(D)~~~~(C)~~ (Offenses) that the owner, operator, or employee of an establishment promptly notified the Police Department that a juvenile was present on the premises of the establishment during curfew hours and refused to leave after being requested to do so by the owner, operator, or employee.

§ 9-3-4 ENFORCEMENT PROCEDURE.

(A) The Police Department shall adopt enforcement procedures in compliance with Chapter 52 (*Proceedings Before and Including Referral to Juvenile Court*) of the Texas Family Code. Such procedures shall include issuing a written warning to a juvenile who violates Subsection 9-3-2(A) (Offenses) of this chapter for the first and second times.

(B) A police officer may not issue a citation to a juvenile for a violation of Subsection 9-3-2(A) (Offenses) of this chapter unless the juvenile has received at least two prior written warnings from a police officer for violations of Subsection 9-3-2(A) (Offenses).

§ 9-3-5 PENALTY.

(A) A juvenile who violates this chapter commits a Class C misdemeanor.

(B) A person not a juvenile who violates this chapter commits a Class C misdemeanor, punishable by a fine of not less than \$50.

§ 9-3-6 EXPIRATION.

This chapter shall expire if it is not reviewed and readopted every three years as prescribed by Chapter 370 (*Miscellaneous Provisions Relating to Municipal and County Health and Public Safety*) of the Texas Local Government Code.

PART 2. The City Council, after review of Austin City Code Chapter 9-3, (*Non-Emergency Curfews*), and having conducted a public hearing as required by Chapter 370 of the Texas Local Government Code, readopts and continues in effect Austin City Code Chapter 9-3 (*Non-Emergency Curfews*), as amended by this ordinance.

PART 3. Unless continued and readopted, Chapter 9-3 (*Non-Emergency Curfews*) will expire on October 1, 2017.

PART 4. This ordinance takes effect on June 26, 2017.

PASSED AND APPROVED

June 15, 2017

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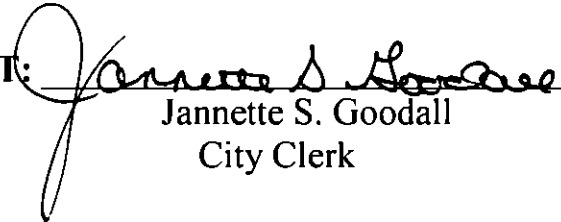
Steve Adler
Mayor

APPROVED:



Anne L. Morgan
City Attorney

ATTEST:



Jannette S. Goodall
City Clerk