

ORDINANCE NUMBER 846-2016

AN ORDINANCE OF THE CITY OF DICKINSON, TEXAS, REPEALING ORDINANCE NUMBER 758-2013, CODIFIED AS ARTICLE VII, JUVENILE CURFEW, OF CHAPTER 12, OFFENSES – MISCELLANEOUS, OF THE CODE OF ORDINANCES OF THE CITY OF DICKINSON; AMENDING CHAPTER 12, OFFENSES – MISCELLANEOUS, OF THE CODE OF ORDINANCES BY DELETING THE CURRENT ARTICLE VII, JUVENILE CURFEW, AND SUBSTITUTING THEREFOR A NEW ARTICLE VII, JUVENILE CURFEW, ESTABLISHING A CURFEW BETWEEN THE HOURS OF 12:00 MIDNIGHT AND 5:00 A.M. ON ANY DAY OF THE WEEK, FOR PERSONS UNDER 17 YEARS OF AGE; ESTABLISHING A DAYTIME CURFEW BETWEEN 7:00 A.M. AND 2:30 P.M. ON ANY SCHOOL DAY FOR PERSONS UNDER 17 YEARS OF AGE; CONTAINING DEFINITIONS; PROVIDING IT IS UNLAWFUL FOR ANY PERSON SUBJECT TO A CURFEW TO REMAIN IN ANY PUBLIC PLACE OR ON THE PREMISES OF ANY ESTABLISHMENT WITHIN THE CITY DURING CURFEW HOURS; PROVIDING IT IS UNLAWFUL FOR ANY PARENT OR GUARDIAN OF A PERSON SUBJECT TO A CURFEW TO KNOWINGLY PERMIT, OR BY INSUFFICIENT CONTROL ALLOW, SUCH PERSON TO REMAIN IN ANY PUBLIC PLACE OR ON THE PREMISES OF ANY ESTABLISHMENT WITHIN THE CITY DURING CURFEW HOURS; PROVIDING IT IS UNLAWFUL FOR ANY PERSON OWNING, OPERATING, OR IN THE EMPLOYMENT OF ANY ESTABLISHMENT IN THE CITY TO KNOWINGLY ALLOW A PERSON SUBJECT TO A CURFEW TO REMAIN ON THE PREMISES OF SUCH ESTABLISHMENT DURING CURFEW HOURS; PROVIDING DEFENSES TO PROSECUTION FOR VIOLATIONS; PROVIDING FOR A PENALTY FOR MINORS AND FOR PARENTS OF MINORS NOT TO EXCEED \$500 AND THAT EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES SHALL BE DEEMED A SEPARATE OFFENSE; MAKING CERTAIN FINDINGS; PROVIDING FOR THE INCORPORATION OF PREAMBLE; PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, A SAVINGS CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, on June 11, 2013, by Ordinance Number 758-2013, the City Council of the City of Dickinson established the terms and conditions of a juvenile curfew in accordance with the terms and provisions of Section 370.002 of the Texas Local Government Code, and such Ordinance was codified as Article VII, Juvenile Curfew, of Chapter 12, Offenses – Miscellaneous, of the Code of Ordinances of the City of Dickinson; and

WHEREAS, Subsection (b) of Texas Local Government Code Section 370.002 provides that a city's curfew ordinance must be the subject of a public hearing and reviewed by the governing body of a municipality every three years or the ordinance will expire; and

WHEREAS, the City's curfew ordinance has not been reviewed since the adoption of Ordinance Number 758-2013 on June 11, 2013; and

WHEREAS, the City Council has determined that there has been an increase in juvenile violence, juvenile gang activity, and crime committed by persons under the age of 17 years in the City of Dickinson, Texas, and in the adjoining Houston metropolitan area; and

WHEREAS, due to their lack of maturity and experience, persons under the age of 17 years are particularly susceptible to participate in unlawful and gang-related activities, and to themselves be victims of older perpetrators of crime; and

WHEREAS, the City has experienced an increase in the incidence of juveniles who roam the City unsupervised during the early morning hours, leading to an ever-increasing workload for the City's Police force, who are called to locations in the City either on request of citizens or business people concerned about the safety of themselves, the juveniles, and their property; and

WHEREAS, throughout the State cities and other governmental units have recognized and are responding to the growing juvenile violence and crime problem through the adoption of appropriate curfew ordinances; and

WHEREAS, the growing juvenile violence and crime problem is being acknowledged and addressed throughout the Nation, as these problems are not unique to the State of Texas, Galveston County, or the City of Dickinson; and

WHEREAS, the City of Dickinson 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 violence and criminal activity; and

WHEREAS, a curfew applicable to persons under the age of 17 years will be in the interest of public health, safety, and general welfare, and will diminish the undesirable impact of such conduct on the citizens of the City of Dickinson.

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

Section 1. The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct.

Section 2. Ordinance Number 758-2013, duly passed and approved by the City Council of the City of Dickinson, Texas, on June 11, 2013, and codified as Article VII, Juvenile Curfew, of Chapter 12, Offenses – Miscellaneous, of the Code of Ordinances of the City of Dickinson is hereby repealed in its entirety.

Section 3. Chapter 12, Offenses – Miscellaneous, of the Code of Ordinances is hereby amended by deleting therefrom all of Article VII, Juvenile Curfew, and substituting therefore a new Article VII, Juvenile Curfew, to read as follows:

“Sec. 12-121. Purpose. It is the purpose of this Ordinance to (a) deter criminal conduct involving juveniles, (b) reduce the number of juvenile crime victims, (c) reduce injury from accidents involving juveniles, (d) reduce the additional time police officers are required to be in the field due to juvenile crime, (e) provide additional and more effective means and options for dealing with gang-related violence and crime, (f) reduce juvenile peer pressure to stay out late (g) reduce juvenile peer pressure to participate in violent or criminal activities, (h) assist parents in the control of their children, and (i) to make the City of Dickinson a better community and a safer place to live and work, to raise a family, and to grow up.

Sec. 12-122. Definitions. For the purposes of this Ordinance the following words or terms shall have the meanings given below:

- (1) *Curfew Hours* shall mean:
 - A. 12:00 midnight until 5:00 a.m. of the following day on Sunday through Saturday; and
 - B. 7:00 a.m. until 2:30 p.m. on Monday through Friday.
- (2) *Emergency* shall mean and include, but not be limited to, a fire, natural disaster, automobile accident, or any unforeseen situation requiring immediate action to prevent serious illness, bodily injury, loss of life, or for the preservation of property.
- (3) *Establishment* shall mean any privately-owned place of business to which the public has access or is invited, including, but not limited to, any place of amusement or entertainment.
- (4) *Guardian* shall mean a person who, under court order, is the guardian of the person of a minor or a public or private agency with whom a minor has been placed by a court.
- (5) *Minor* shall mean any person under 17 years of age.
- (6) *Operator* shall mean any individual, firm, association, partnership, entity, or corporation operating, managing, or conducting

the operation of any establishment. The term includes the members or partners of an association, entity, or partnership and the officers of a corporation.

(7) *Parent* shall mean a person who is a natural parent, adoptive parent, or step-parent of a minor, or a person at least 18 years of age who is authorized by the parent or guardian of a minor or by Court order to have the care and custody of such minor.

(8) *Police Department* shall mean the Dickinson Police Department and shall include any law enforcement agency working with the City of Dickinson through any inter-agency agreement.

(9) *Public Place* shall mean any place to which the public or a substantial group of the public has access and shall include, but not be limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transportation facilities, restaurants, theaters, game rooms, shops, shopping centers, or any other place that offers for sale services, merchandise, or entertainment services.

(10) *Remain* shall mean to linger or stay, or to 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.

Sec. 12-123. Offenses.

(1) It shall be unlawful for any minor to knowingly remain, walk, run, or stand, or to operate or ride about in any motor vehicle or bicycle, in or upon any public place or on the premises of any establishment within the city during curfew hours.

(2) It shall be unlawful for the parent or guardian of a minor to knowingly permit, or by insufficient control allow, a minor to remain in or upon any public place or on the premises of any establishment within the city during curfew hours.

(3) It shall be unlawful for the owner, operator, or any employee of an establishment to knowingly allow a minor to remain upon the premises of the establishment during curfew hours.

Sec. 12-124. Defenses.

(1) It shall be a defense to prosecution under Section 12-123 of this Article that a 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;
- (c) in a motor vehicle involved in intrastate or interstate travel, and traveling by a direct route between the point of departure and destination.
- (d) engaged in a lawful employment activity, or going directly to the employment activity, or returning directly to the Minor's residence from the employment activity;
- (e) involved in an Emergency;
- (f) on an errand made necessary by a verifiable illness, injury, or emergency;
- (g) on the sidewalk abutting the Minor's permanent residence or abutting the residence of a next-door neighbor of the Minor's permanent residence, if the neighbor did not complain to the Police Department about the Minor's presence at their residence;
- (h) attending a school, religious, or government-sponsored or other civic activity supervised by adults and sponsored by an educational, religious, or governmental institution, civic organization, or other similar entity, or traveling directly to, or returning from, any such activity;
- (i) engaged, participating in, or traveling to or from any event, function, or activity for which the application of 12-123 of this Article would contravene the minor's rights protected by the United States Constitution including, but not limited to, First Amendment rights such as the free exercise of religion, freedom of speech, or 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; or

(k) with respect to the hours between 7:00 a.m. and 2:30 p.m. only, that the offense occurred during the school summer vacation break period of the school in which the minor is enrolled or on a holiday observed by the closure of classes in the school in which the minor is enrolled or that the minor has graduated from high school or received a high school equivalency certificate; or that the minor has permission to be absent from school or be in a public place from an authorized school official. In the case of a child being educated in a home school, a parent shall be deemed a school official.

(2) It is a defense to prosecution under Section 12-123 of this Article that the Minor has been directed by his or her Parent or Guardian to engage in a specific activity or to carry out expressed instructions, during the time that the Minor is actually engaged in fulfilling those directions or responsibilities.

(3) It is a defense to prosecution under Section 12-123(3) of this Article 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 the Minor refused to leave.

Sec. 12-125. Enforcement.

Before taking any enforcement action under this Ordinance, a Police Officer shall ask the apparent offender's age and reason for being in the Public Place or Establishment. The officer shall not issue a citation or make an arrest under this Ordinance unless the officer reasonably believes that an offense has occurred and that based on any response given, and other circumstances, no defense in Section 12-124 of this Article is present.

In lieu of issuing a citation, the Police Officer may, based on the circumstances, issue a warning notice to the Minor, who shall be ordered to go home by the most direct means and route. A copy of the warning notice shall be filed with the Police Department, and a letter shall then be promptly sent to the Parent or Guardian of the Minor advising of the contact with the Minor during Curfew Hours and requesting cooperation in the future.

Sec. 12-126. Penalties.

(1) A person who shall intentionally, knowingly, recklessly or with criminal negligence violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined

in an amount not to exceed \$500. Each day of violation shall constitute a separate offense.

(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 Section 12-123(1) of this Article and shall refer the Minor to Juvenile Court.”

Section 4. This Ordinance shall be cumulative of all other Ordinances and shall not repeal any of the provisions of said Ordinances except those instances where there are direct conflicts with the provisions of this Ordinance. Ordinances or parts thereof in force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance. Provided, however, that any complaint, action, claim or lawsuit that has been initiated or has arisen under or pursuant to any of the Ordinances or sections thereof that have been specifically repealed on the date of adoption of this Ordinance shall continue to be governed by the provisions of such Ordinance or section thereof and for that purpose the Ordinance or section thereof shall remain in full force and effect.

Section 5. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Dickinson, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 6. All rights and remedies of the City of Dickinson are expressly saved as to any and all violations of the provisions of any Ordinances affecting and which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such Ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

Section 7. Any person violating any of the provisions of this Ordinance shall be deemed guilty of a Class C misdemeanor and, upon conviction, shall be fined, except as otherwise provided herein, in a sum not to exceed Five Hundred Dollars (\$500) for each offense, and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

Section 8. This Ordinance shall be in full force and effect from and after its date of passage, in accordance with law.

DULY PASSED AND APPROVED on first reading this 24th day of May, 2016.

DULY PASSED AND APPROVED on second reading this 14th day of June, 2016.

(Third Reading Suspended)

DULY PASSED, APPROVED, AND ADOPTED on third and final reading this _____ day of _____, 2016.

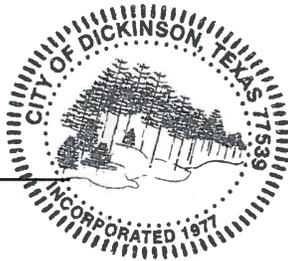


Julie Masters, Mayor
City of Dickinson, Texas

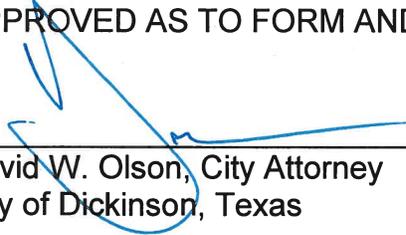
ATTEST:



Alun W. Thomas, City Secretary
City of Dickinson, Texas



APPROVED AS TO FORM AND CONTENT:



David W. Olson, City Attorney
City of Dickinson, Texas