

ORDINANCE NO. 2004-02

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF TOMBALL, TEXAS, BY DELETING THEREFROM ALL OF DIVISION 1 OF ARTICLE II OF CHAPTER 50 AND SUBSTITUTING THEREFOR A NEW DIVISION 1; ESTABLISHING A CURFEW FOR PERSONS UNDER THE AGE OF 17 YEARS BETWEEN 12:00 MIDNIGHT AND 6:00 A.M. OF THE FOLLOWING DAY AND BETWEEN THE HOURS OF 9:00 A.M. AND 2:30 P.M. ON SCHOOL DAYS; PROVIDING IT UNLAWFUL FOR ANY PERSON SUBJECT TO A CURFEW HEREUNDER TO REMAIN IN ANY PUBLIC PLACE OR ON THE PREMISES OF ANY ESTABLISHMENT WITHIN THE CITY DURING CURFEW HOURS; PROVIDING IT UNLAWFUL FOR ANY PARENT OR GUARDIAN OF A PERSON SUBJECT TO A CURFEW HEREUNDER 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 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 HEREUNDER TO REMAIN ON THE PREMISES OF SUCH ESTABLISHMENT DURING CURFEW HOURS; PROVIDING DEFENSES TO PROSECUTION FOR VIOLATIONS HEREUNDER; PROVIDING A PENALTY OF AN AMOUNT NOT TO EXCEED \$500 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF; MAKING CERTAIN FINDINGS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; AND PROVIDING FOR SEVERABILITY.

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WHEREAS, the City Council has determined that as a direct result of implementing a juvenile curfew the incidents of juvenile crime and juvenile victimization has been reduced; and

WHEREAS, the City Council hereby finds and determines that the re-adoption of a juvenile curfew is necessary 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 Tomball; now therefore

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

Section 1. The Code of Ordinances of the City of Tomball, Texas, is hereby amended by deleting all of Division 1 of Article II of Chapter 50 thereof and substituting therefor a new Division 1 to provide as follows:

“DIVISION 1. GENERALLY

Sec. 50-71. Purpose.

It is the express purpose of this article to:

- (1) Deter criminal conduct involving juveniles;
- (2) Reduce the number of juvenile crime victims;
- (3) Reduce injury from accidents involving juveniles;
- (4) Reduce the additional time police officers are required to be in the field due to juvenile crime;
- (5) Provide additional and more effective means and options for dealing with gang-related violence and crime;
- (6) Reduce juvenile peer pressure to stay out late;
- (7) Reduce juvenile peer pressure to participate in violent or criminal activities;
- (8) Assist parents in the control of their children; and
- (9) To make the City a better community and a safer place to live and work, to raise a family, and grow up.

Sec. 50-72. Definitions.

For the purposes of this article the following words or terms shall have the meanings given below:

Curfew Hours shall mean:

- (1) 12:00 midnight on any day of the week until 6:00 a.m. of the following day; and
- (2) 9:00 a.m. until 2:30 p.m. on Monday through Friday; provided however, the hours defined in this paragraph (2) shall not be considered as Curfew Hours for minors not subject to compulsory school attendance pursuant to §25.085, Texas Education Code, nor shall the hours defined in this paragraph (2) be considered as Curfew Hours on days or during periods in which the school where the applicable minor is enrolled is closed, or classes for which the applicable minor is enrolled have been canceled under the order and direction of officials authorized to issue such orders and directives, or, if the applicable minor is a duly authorized home school student under applicable provisions of the Texas Education Code, on days or during periods in which such minor is not receiving educational instruction.

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, or loss of life, or for the preservation of property.

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.

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.

Minor shall mean any person under 17 years of age.

Operator shall mean any individual, firm, association, partnership, entity or corporation operating, managing, or conducting the operation of any establishment. The term shall include the members or partners of an association or partnership and the officers of a corporation.

Parent shall mean a person who is a natural parent, adoptive parent or stepparent 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.

Police Department shall mean the Tomball Police Department or any successor police department of the City of Tomball, and shall include any law enforcement agency working with the city through any interagency agreement.

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 and 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.

Remain shall mean to linger or stay, or 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. 50-73. Offenses.

(a) It shall be unlawful for any minor to knowingly remain, walk, run or stand, or 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.

(b) 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.

(c) 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. 50-74. Defenses.

(a) It shall be a defense to prosecution under Section 50-73 of this article that a 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;
- (3) In a motor vehicle involved in intrastate or interstate travel, and traveling through the City by a direct route between the point of departure and destination;
- (4) 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;
- (5) Involved in an emergency;
- (6) On an errand made necessary by an illness, injury, or emergency;

(7) 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 thereon;

(8) 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 school, religious, governmental, or civic activity;

(9) Engaged, participating in, or traveling to or from any event, function, or activity for which the application of Section 50-73 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

(10) Married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code.

(b) It is a defense to prosecution under Section 50-73 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.

(c) It is a defense to prosecution under Section 50-73(c) 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. 50-75. Enforcement.

(a) Before taking any enforcement action under this article, 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 article unless the officer reasonably believes that an offense has occurred and that based on any response given, and other circumstances, no defense in Section 50-74 is present.

(b) In lieu of issuing a citation or making an arrest, 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. 50-76. Penalties.

(a) Any person who shall violate any provision of this article 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. Following the issuance of a citation for a violation of the curfew hours set forth in paragraph (2) of Section 50-72, the minor shall be returned to school. Any citation issued for violation of any provision of this article shall direct the parent(s) or legal guardian(s) of the minor to appear together with the minor in connection with the charge of a violation.

(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 50-73(a) of this article and shall refer the minor to juvenile court.”

Section 2. All ordinances or parts of ordinances inconsistent or in conflict herewith, are, to the extent of such inconsistency or conflict, hereby repealed.

Section 3. 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 Tomball, 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.

FIRST READING:

READ, PASSED, AND APPROVED AS SET OUT BELOW AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL, HELD ON THE 3RD DAY OF MAY, 2004.

COUNCILMAN FORD	<u>AYE</u>
COUNCILMAN GATLIN	<u>AYE</u>
COUNCILMAN HOLLAND	<u>AYE</u>
COUNCILMAN STOVALL	<u>AYE</u>
COUNCILMAN MARTIN	<u>AYE</u>

SECOND READING:

READ, PASSED, AND APPROVED AS SET OUT BELOW AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL, HELD ON THE 17TH DAY OF MAY, 2004.

COUNCILMAN FORD	<u>AYE</u>
COUNCILMAN GATLIN	<u>AYE</u>
COUNCILMAN HOLLAND	<u>AYE</u>
COUNCILMAN MARTIN	<u>AYE</u>

(signed) H. G. Harrington
H. G. HARRINGTON, Mayor
City of Tomball

ATTEST:

(signed) Doris Speer
DORIS SPEER, City Secretary
City of Tomball