

ORDINANCE NO. 2015-34

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF BOERNE, TEXAS, BY AMENDING CHAPTER 15, ARTICLE IV, YOUTH CURFEW; PROVIDING FOR DEFINITIONS; ESTABLISHING DEFENSES TO PROSECUTION; ESTABLISHING AN ENFORCEMENT PROCEDURE; PROVIDING FOR A MAXIMUM PENALTY OF \$500.00 FOR VIOLATION OF THIS ORDINANCE.

WHEREAS, recently the City has experienced incidents of juvenile mischief and possible criminal activity; and

WHEREAS, the City Council has determined that if this activity remains unchecked, that juveniles could become involved in a wide range of unacceptable behavior including vandalism, public drinking, and littering, drug use, breaking and entering, and harassment of residents; and

WHEREAS, persons under the age of 17 are particularly susceptible by their lack of maturity and experience to participate in unlawful activities and to be victims of older perpetrators of crime; and

WHEREAS, the City Council has found that juvenile mischief can indicate a breakdown in the supervision and guidance normally provided by parents for juveniles; and

WHEREAS, the City of Boerne 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 incidents of juvenile mischief; and

WHEREAS, ~~the offensive activities of juveniles are not easily controlled by existing laws and ordinances;~~ and

WHEREAS, a curfew for those under the age of 17 will be in the interest of the public health, safety, and general welfare of the public, and will help to attain the foregoing objectives, and **will help** to diminish the undesirable impact of such conduct on the citizens of the City of Boerne, ~~and will promote the public good, safety and welfare;~~ and

WHEREAS, parental responsibility for the whereabouts of children is the accepted norm and legal sanctions to enforce such responsibility have had demonstrated effectiveness in many Texas cities; **and**

WHEREAS, the City Council has determined that a curfew ordinance will increase parental responsibility for juveniles within their control and decrease juvenile delinquency and mischief; and

WHEREAS, the passage of this ordinance is pursuant to the City of Boerne's police power as stated in its Charter and as set forth in the laws and constitutions of the State of Texas.

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

That Sections 15.86 thru 15.90 of the Code of Ordinances, City of Boerne, Texas, is hereby amended to read as follows:

Sec. 15.86 Definitions

As used in this ordinance the following words and terms shall have the meanings respectively ascribed:

- (a) Minor shall mean any person under seventeen (17) years of age and over nine (9) years of age.
- (b) Parent shall mean a person who is the natural or adoptive parent of a person. As used herein, "parent" shall also include a court appointed guardian or other person eighteen (18) years of age or older, authorized by the parent, by a court order, or by the court appointed guardian to have the care and custody of a person.
- (c) Guardian shall mean any person to whom custody of a minor has been given by a court order.
- (d) Emergency shall include, but not be limited to fire, natural disaster, an automobile accident, or obtaining immediate medical care for another person.
- (e) 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 building, transport facilities, and shops.

Sec. 15.87 Offenses

- (a) It shall be unlawful for a minor to purposefully remain, walk, run, stand, drive or ride about, in, or upon, any public place in the City of Boerne between the hours of 12:00 a.m. (Midnight) and 6:00 a.m. on a Sunday, Monday, Tuesday, Wednesday, Thursday, Friday, or Saturday.
- (b) It shall be unlawful for the parent having legal custody of a minor to knowingly allow or permit the minor to be in violation of the curfew imposed in section (a).

Sec. 15.88 Defenses

It is a defense to prosecution under Section 2 of this article that:

- (a) The minor was accompanied by his or her parent;
- (b) The minor was accompanied by another adult approved by the parents;
- (c) The minor was on an emergency errand;
- (d) The minor was attending a school, government sponsored, or religious activity or is going to or coming from a school, religious or government sponsored activity without detour or stop;
- (e) The minor was engaged in a lawful employment or volunteer work at a recognized charity institution or is going to or coming from such activity without detour or stop;

(f) The minor was on the sidewalk of the place where such minor resides or on the sidewalk of a place where the minor has permission from his/her parent or guardian to be or on the sidewalk of a next-door neighbor **if such neighbor is** not communicating an objection to the police officer;

(g) The minor was upon an errand directed by his or her parent;

(h) The minor was in a motor vehicle involved in intrastate or interstate transportation or transportation for which passage through the curfew area is the most direct route;

(i) The minor was exercising his or her First Amendment Rights protected by the United States or Texas Constitution, including but not limited to, the free exercise of religion, freedom of speech, and freedom of assembly; **and/or**

(j) The minor was married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code;

~~(k) In the case of a child being educated in a home school, a parent shall be deemed a school official.~~

Sec. 15.89 Enforcement Procedure

(a) Any police officer, upon finding a minor in violation of Section 2, shall determine the name and address of the minor, and the name and address of his or her parent(s) or guardian(s). A warning notice shall be issued to the minor, who shall be ordered to go home or will be taken home by the most direct means and route. A copy of the notice shall be forwarded to the **Criminal Investigations** Unit of the Boerne Police Department, which shall send a letter to the parent(s) or guardian(s) of the minor advising of the fact that the minor was found in violation of this article, and soliciting cooperation in the future.

(b) Provided, that if a police officer shall find a minor in violation of section 2 **and such minor**, who has once previously been so found **and so**, ~~and warned~~, as in (a) above, the officer shall again record the name and address of the minor and his parent(s) or guardian(s); **and** shall issue a second warning notice, ~~and ordering~~ the minor to go home or ~~will~~ **taking** him/her home by the most direct means and route. A copy of the second warning shall be forwarded to the **Criminal Investigations** Unit of the Boerne Police Department, which at this point shall schedule a person to person conference with the parent(s) or guardian(s) and the child, concerning this curfew ordinance and the City's expectation and requirement for parental control.

(c) Any police officer, upon finding a minor in violation of section 2, who has twice previously been found in violation and issued warnings as provided for in (a) and (b) above, shall transfer the case to proper authorities for handling under the provisions of Title 3 of the Family Code. In addition, a complaint will be filed against the parents in Municipal Court for violation of section 2 (c) hereof. The police department shall file all necessary legal papers, supply all necessary documentation, and provide necessary testimony as required for pursuing violation of this article by either the minor or by any parent or guardian.

Sec. 15.90 Penalties

(a) Any minor violating the provisions of this article shall be guilty of a Class C Misdemeanor as defined in the Texas Penal Code and shall be dealt with in accordance with the provisions of Title 3 of the Texas Family Code.

(b) A parent of a minor violating this article shall be guilty of a misdemeanor, which shall be punishable by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00).

(c) In assessing punishment for either a parent or a child, the municipal court judges are encouraged to consider the community service program.

Severability

If any article, section, subsection, paragraph, subdivision, clause, phrase, or provision of this ordinance shall be held invalid, unenforceable, or illegal, said invalidity, unenforceability, or illegality shall not affect any other article, section, subsection, paragraph, subdivision, clause, phrase, or provision of this ordinance, it being the intent of the City Council that this ordinance would have been enacted in the absence of the article, section, subsection, paragraph, subdivision, clause, phrase, or provision of this ordinance having been held invalid, unenforceable, or illegal.

Repealer

All ordinances and resolutions, and parts of ordinances and parts of resolutions, in conflict with this ordinance are hereby repealed, to the extent of conflict only.

PASSED and APPROVED on this the 22nd day of September, 2015.

PASSED, APPROVED and ADOPTED on this the ____ day of October, 2015.

APPROVED:

ATTEST:

Mayor

City Secretary

APPROVED AS TO FORM:



City Attorney