

CITY OF TYLER, TEXAS CITY COUNCIL COMMUNICATION

Agenda Number: H-1

Date: February 27, 2008

Subject: Request that the City Council consider conducting a public hearing and consider adopting an Ordinance amending Tyler City Code Chapter 4 relating to a juvenile curfew.

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Item Reference: On February 9, 1994, the City Council adopted Ordinance Number O-94-15 establishing a juvenile curfew for the City of Tyler. The Ordinance establishes curfew hours for persons under seventeen (17) years of age. The curfew hours are from 11:00 p.m. to 6:00 a.m. on any day except Friday or Saturday, and 12:00 midnight to 6:00 a.m. on Friday and Saturday. On March 25, 1998, the City Council adopted Ordinance Number O-98-27, which amended and re-numbered the juvenile curfew Ordinance. On March 17, 1999, the City Council conducted a public hearing and adopted Ordinance Number O-99-22 re-adopting the juvenile curfew Ordinance. On February 6, 2002, the City Council conducted a public hearing and adopted Ordinance Number O-2002-6 re-adopting the juvenile curfew Ordinance. On February 23, 2005, the City Council conducted a public hearing and adopted Ordinance Number O-2005-17 re-adopting the juvenile curfew Ordinance.

PERIODIC REVIEW OF JUVENILE CURFEW ORDINANCES REQUIRED

Under *Tex. Loc. Gov't Code Sec. 370.002(a)*, the governing body of a home-rule municipality is required to review its juvenile curfew Ordinance at least every three (3) years. The state law requires the City Council to conduct a public hearing to review the effects of the Ordinance on the public and to determine if the Ordinance is properly addressing the problems that it was originally intended to remedy. Following this review, the state law requires the City Council to either keep, modify, or abolish the juvenile curfew Ordinance.

EFFECTS OF JUVENILE CURFEW ORDINANCE

According to Municipal Court records, police officers issued a total of 79 juvenile curfew tickets in the year 2007. The fine for a curfew violation is \$54.00, plus \$66.00 in court costs, which is sent to the State, for a total cost to the citizen of \$120.00. Revenue collected by the City in 2007 for curfew violations was \$4,340.00. At this time there are no known complaints or lawsuits that have arisen from enforcement of the Ordinance.

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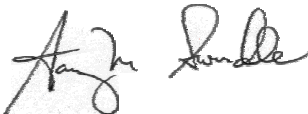
The Police Department has completed a review of the juvenile curfew Ordinance. The Police Department recommends that the Ordinance be continued and enforced for the following reasons:

1. The Police Department can seek to protect minors from the potential dangers associated with late night activities;
2. The juvenile curfew Ordinance is an invaluable tool that helps police officers who work the midnight shift to control gangs and address suspicious activities;
3. The Ordinance serves as a necessary medium of contact with young people and is useful in controlling youths that are observed loitering late at night without adult supervision;
4. Without the juvenile curfew Ordinance, some juveniles tend to congregate in parking lots and businesses, with resulting litter, damage to property, loud noise, fights, and other disturbances; and
5. Keeping the Ordinance in effect will enable the Police Department to gather additional data that would be useful for future evaluations of the Ordinance's effectiveness.

RECOMMENDATION:

It is recommended that the City Council conduct a public hearing and re-adopt the juvenile curfew Ordinance.

Drafted/Recommended By:
Department Leader



Gary Swindle, Chief of Police

Edited/Submitted By:
City Manager

ORDINANCE NO. O-2008-33

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 4, "OFFENSES AND MISCELLANEOUS PROVISIONS", ARTICLE VI, "MISCELLANEOUS OFFENSES", OF THE CODE OF ORDINANCES, CITY OF TYLER, TEXAS, RELATING TO CURFEW HOURS FOR MINORS; RELATING TO OFFENSES FOR MINORS AND PARENTS OF MINORS; PROVIDING AFFIRMATIVE DEFENSES; PROVIDING FOR ENFORCEMENT BY THE POLICE DEPARTMENT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City Council to protect the public health, safety, and welfare, and to protect juveniles in particular; and

WHEREAS, on February 9, 1994, the City Council adopted Ordinance No. O-94-15 establishing a juvenile curfew; and

WHEREAS, on March 25, 1998, the City Council adopted Ordinance No. O-98-27 amending and re-numbering the juvenile curfew ordinance; and

WHEREAS, on March 17, 1999, the City Council conducted a public hearing and adopted Ordinance No. 0-99-22 re-adopting the juvenile curfew ordinance; and

WHEREAS, on February 6, 2002, the City Council conducted a public hearing and adopted Ordinance No. 0-2002-6 re-adopting the juvenile curfew ordinance; and

WHEREAS, on February 23, 2005, the City Council conducted a public hearing and adopted Ordinance No. 0-2005-17 re-adopting the juvenile curfew ordinance; and

WHEREAS, Tex. Loc. Gov't Code Sec. 370.002 requires the governing body of a home-rule municipality to review a juvenile curfew ordinance at least every three (3) years; and

WHEREAS, Tex. Loc. Gov't Code Sec. 370.002 requires the governing body to conduct a public hearing to review the effects of the juvenile curfew ordinance on the community and to examine the problems that the ordinance was intended to remedy; and

WHEREAS, the City Council has conducted the hearing required by Tex. Loc. Gov't Code Sec. 370.002; and

WHEREAS, a goal of a limited curfew is to remove minors from City streets between the hours that many crimes occur; and

WHEREAS, it is necessary to protect the rights of minors who, for legitimate reasons, are out during specified curfew hours and use the least restrictive means to implement a curfew for minors; and

WHEREAS, it is important that parents act responsibly with regard to their minor children; and

WHEREAS, the parent shall retain the right to make decisions regarding his or her child in all other areas; and

WHEREAS, the current ordinance authorizes police officers to order a minor to go home, to transport the minor to a holding location for a parent to pick up the minor, or to transport minors to their homes in situations where a parent is unavailable to pick up the minor; and

WHEREAS, it is important for the juvenile curfew ordinance to be re-adopted;

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

PART 1: That Tyler City Code Chapter 4, "Offenses and Miscellaneous Provisions", Article VI., "Miscellaneous Offenses", is hereby amended by re-adopting the juvenile curfew ordinance in Sec. 4-98 as follows:

Sec. 4-98. Curfew hours for minors.

a. Definitions. In this section:

Curfew hours means:

1. 11:00 p.m. to 6:00 a.m. any day except Friday or Saturday; and
2. 12:00 midnight to 6:00 a.m. Friday and Saturday.

Emergency means, but is not limited to, a fire, natural disaster, automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

Establishment means any privately-owned place of business operated for profit to which the public is invited, including but not limited to any place of amusement or entertainment.

Holding location means a place designated by the Police Chief 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.

Minor means any person under seventeen (17) years of age.

Parent means a person who is:

1. A natural or adoptive parent of a minor;
2. A court-appointed guardian of a minor; or
3. 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.

Public place means any street, alley, highway, sidewalk, playground, park, plaza, building, or other place used by or open to the public.

Remain means to:

1. Linger or stay unnecessarily; or
2. 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. It is unlawful for a minor to remain in any public place or on the premises of any establishment within the City during curfew hours.

2. It is unlawful for a parent with knowledge to permit, or by insufficient control allow, 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 under subsection b. 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 object to the minor's presence;
7. Attending 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 right of assembly; or
9. Married or had been married or had disabilities of minority removed in accordance with State law.

d. Enforcement.

1. If a 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, may transport the minor to the minor's home, or may take the minor into custody and deliver the minor to a holding location.

2. If a minor is taken into custody under this subsection, 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 Police Chief to file an incident report, the minor is released to the parent. If a parent cannot be located or fails to take charge of the minor, the minor is released to the juvenile authorities.

3. If a minor is not taken into custody for a violation of subsection b. 1., the Police Department shall notify a parent of the minor that the minor has violated subsection b.1. and may issue a citation to the minor's parent if reasonable grounds exist to believe that the parent has violated subsection b.2 of this section.

4. A Police Officer shall, within twenty-four (24) hours after finding a minor in violation of subsection b.2, file a written report on the incident. (Ord. No. 0-98-52, 6/24/98; Ord. No. 0-99-22; 3/17/99) (Ord. No. 0-2002-6, 2-6-02) (Ord. No. 0-2005-17, 2/23/05) (Ord. No. 0-2008-33; 2/27/08).

PART 2: 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 3. That any person, firm, or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. 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 as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be February 29, 2008.

PASSED AND APPROVED this the 27th day of February, A. D., 2008.

JOSEPH O. SEEBER, MAYOR
OF THE CITY OF TYLER, TEXAS

A T T E S T :

APPROVED:

CASSANDRA BRAGER, CITY CLERK

CITY ATTORNEY