

ORDINANCE NO. 2020-09

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, CONTINUING THE CURFEW, FOR MINORS, AS ESTABLISHED IN ORDINANCE 2019-56, ARTICLE 8.05, AND PROVIDING A PENALTY NOT TO EXCEED FIVE HUNDRED DOLLARS (\$500.00) FOR EACH OFFENSE; PROVIDING FOR FINDINGS OF FACT, ADOPTION, REPEALER, SEVERABILITY, AND ENFORCEMENT; ESTABLISHING AN EFFECTIVE DATE; AND PROPER NOTICE AND MEETING.

WHEREAS, the City Council originally adopted a minors curfew ordinance in 1994 and most recently readopted said ordinance on April 25, 2017; and

WHEREAS, Texas Local Government Code Section 370.002 requires home-rule municipalities to review their minor's curfew ordinances every three years to determine the effects on the community and on problems the ordinance was intended to remedy; and

WHEREAS, Texas Local Government Code section 370.002 requires that the City Council conduct public hearings on the need to continue the ordinance or order and consider the efficacy of its regulations related to a curfew for minors in the City of Bastrop, and following the hearing to determine whether, in the judgement of the Council, it is in the best interest of the public safety, health and welfare to either continue, modify or abolish the curfew regulations set out in the City Code; and

WHEREAS, Interim Chief Nagy conducted a review of the minors curfew ordinance during the 2019 nuisance codes ordinance updates and presented his report regarding the curfew ordinance to the City Council; and

WHEREAS, the City Council accepted the findings in Interim Chief Nagy's report and adopted the recommended changes to the curfew ordinance on November 26, 2019 when the City Council adopted Ordinance No. 2019-56; and

WHEREAS, the City Council has reviewed the effects of the City's minors curfew ordinance, codified as Article 8.05 in the City's Code of Ordinances, on the community and its effect on minors, crime and crime victims, in accordance with the Texas Local Government Code; and

WHEREAS, at a regularly scheduled meeting of the City Council, held on April 14th, 2020, the Council conducted a public hearing on the need to continue the ordinance or order and, at the conclusion of the hearing, after considering all information provided and testimony given, the Council found that it is in the best interest of the health, safety and welfare of the citizens of the City, to continue the City's regulations related to a curfew for minors in the City of Bastrop, Texas.

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

Section 1. **FINDINGS OF FACT** The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

Section 2. **READOPTION** Chapter 8, Article 8.05 of the City of Bastrop Code of Ordinances is hereby readopted, and Chapter 8, Article 8.05 shall continue to read in accordance with Attachment "A", which is attached hereto and incorporated into this Ordinance for all intents and purposes. Any underlined text shall be inserted into the Code and any struck-through text shall be deleted from the Code, as stated on Attachment A.

Section 3. REPEALER To the extent reasonably possible, ordinances are to be read together in harmony. However, all ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

Section 4. SEVERABILITY Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

Section 5. CODIFICATION The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in the City's Code of Ordinances as authorized by Section 52.001 of the Texas Local Government Code.

Section 6. EFFECTIVE DATE This ordinance shall take effect upon the date of final passage noted below, or when all applicable publication requirements, if any, are satisfied in accordance with the City's Charter, Code of Ordinances, and the laws of the State of Texas.

Section 7. PROPER NOTICE & MEETING It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

READ & ACKNOWLEDGED on First Reading on the 14th day of April 2020.

READ & APPROVED on Second Reading on the 28th day of April 2020.

APPROVED:


Cennie B. Schroeder, Mayor

ATTEST:


Ann Franklin, City Secretary

APPROVED AS TO FORM:


Alan Bojorquez, City Attorney

ARTICLE 8.05 - MINORS CURFEW

Sec. 8.05.001 - Definitions

- (a) The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

Curfew hours.

- (1) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday, until 5:00 a.m. of the following day; and
- (2) 12:01 a.m. until 5:00 a.m. on any Friday or Saturday; and
- (3) During school hours on any Monday, Tuesday, Wednesday, Thursday, or Friday when Bastrop Independent School District public schools are in session.

Custodian. A person over the age of twenty-one (21) who is authorized or designated by a parent, guardian, or court of competent jurisdiction to supervise and control a minor.

Emergency. An unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life. Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage or loss which demands immediate action.

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

Guardian.

- (1) A person who, under court order, is the guardian of the person of a minor; or
- (2) A public or private agency with whom a minor has been placed by a court.

Minor. Any person:

- (1) Ten (10) years of age or older and under seventeen (17) years of age; or
- (2) Seventeen (17) years of age or older and under eighteen (18) years of age.

Operator. Any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.

Parent. A person who is a natural parent, adoptive parent, or stepparent of the minor (excluding any person whose parental rights have been terminated in accordance with the Texas Family Code).

Public place. Any place in which the public or a substantial group of the public has access, but excluding areas where access is controlled by property owners and/or management by use of signs, policy or personnel. Public places may include but are not limited to, streets, highways, common areas beyond the exterior walls of school buildings, hospitals, apartment houses, office buildings, transport facilities, shops, and shopping centers.

Remain. To:

- (1) Linger or stay; or
- (2) Fail to leave premises when requested to do so by a peace officer or the owner, operator, or other person in control of the premises.

Serious bodily injury. Bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(Ord. No. [2019-56](#), § 2(Att. B), 11-26-19)

Sec. 8.05.002 - Offenses.

- (a) A minor commits an offense if he knowingly remains, walks, runs, stands, drives, rides, or otherwise is present in, on or upon any public place, or any private place other than his place of residence, or on the premises of any establishment within the city during curfew hours.
- (b) A parent, guardian, or custodian of a minor commits an offense if he knowingly permits, or by insufficient control allows, the minor to remain, walk, run, stand, drive, ride, or otherwise be present in, on, or upon any public place or on the premises of any establishment within the city during curfew hours.
- (c) The owner, operator, or any other person in control of a public place or establishment commits an offense if he or she intentionally and knowingly allows or permits a minor to remain upon the premises of the public place or establishment during curfew hours.

(Ord. No. [2019-56](#), § 2(Att. B), 11-26-19)

Sec. 8.05.003 - Defenses.

- (a) It is a defense to prosecution under section 8.05.002 that the minor was:
 - (1) Accompanied by the minor's parent, guardian, or spouse, or custodian;
 - (2) On an errand at the direction of the minor's parent or guardian, without any detour or stop;
 - (3) In a motor vehicle involved in interstate travel with the consent of the minor's parent, guardian, or custodian;
 - (4) Engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
 - (5) Involved in an emergency;
 - (6) On private property at which the minor resides or is present with consent of the parent, guardian, custodian, or spouse;
 - (7) Attending an official school, religious, or other recreational activity supervised by a person over the age of twenty-one (21) and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by a person over the age of twenty-one (21) and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor;
 - (8) Exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; or
 - (9) A minor who has had disabilities of minority removed in accordance with V.T.C.A., Family Code, ch. 31.
- (a) It is a defense to prosecution under section 8.05.002(c) 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 refused to leave.
- (b) With respect to the school hours curfew only (see section 8.05.001, definition of "curfew hours," subsection (3)), it is a defense that the school which the minor attends was not in session, that the minor is a high school graduate or has equivalent certification, that the minor is on an excused absence from his or her place of schooling, or that the minor is participating in a work-study program which requires the minor to be off campus during school hours.

(Ord. No. [2019-56](#), § 2(Att. B), 11-26-19)

Sec. 8.05.004 - Enforcement procedures.

All enforcement procedures adopted by the police department shall be in compliance with the provisions of the Texas Family Code.

(Ord. No. [2019-56](#), § 2(Att. B), 11-26-19)

Sec. 8.05.005 - Penalties.

- (a) Any minor violating this division shall be guilty of a class C misdemeanor.
- (b) Any other person violating this division shall be guilty of a class C 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) When required by V.T.C.A. Family Code, § 51.08, as amended, the municipal court shall waive original jurisdiction over a minor who violates section 8.05.002 of this division and shall refer the minor to juvenile court.

(Ord. No. [2019-56](#), § 2(Att. B), 11-26-19)