

ORDINANCE NO. 4897

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, REPEALING AND REPLACING ARTICLE VII, "CURFEW HOURS FOR MINORS," OF CHAPTER 10, "OFFENSES – MISCELLANEOUS," OF THE MESQUITE CITY CODE, CREATING OFFENSES FOR MINORS, PARENTS AND GUARDIANS OF MINORS, AND BUSINESS ESTABLISHMENTS VIOLATING CURFEW REGULATIONS, PROVIDING DEFENSES, PROVIDING FOR ENFORCEMENT, AND PROVIDING FOR WAIVER BY THE MUNICIPAL COURT OF JURISDICTION OVER A MINOR WHEN REQUIRED UNDER THE TEXAS FAMILY CODE; PROVIDING REPEALER, CONFLICTS RESOLUTION, SEVERABILITY AND SAVINGS CLAUSES; PROVIDING FOR A PENALTY NOT TO EXCEED \$500.00 FOR EACH OFFENSE; AND DECLARING AN EFFECTIVE DATE THEREOF.

WHEREAS, it is the intent of the City Council of the City of Mesquite, Texas ("City Council") to protect the public health, safety, and welfare; and

WHEREAS, the City of Mesquite, Texas, ("City") is a home-rule municipality acting under its Charter adopted, and amended, by the electorate pursuant to the Texas Constitution, Article 11, Section 5 and the Texas Local Government Code Chapter 9; and

WHEREAS, a home-rule municipality has full power of local self-government, pursuant to Texas Local Government Code, Title 2, Subtitle D, Chapter 51, Section 51.072(a); and

WHEREAS, a home-rule municipality has general enforcement authority and may enforce each rule, ordinance, or police regulation of the municipality and may punish a violation of a rule, ordinance, or police regulation pursuant to Texas Local Government Code, Title 2, Subtitle D, Chapter 54, Section 54.001, as amended and pursuant to Mesquite City Code, Chapter 1, Section 1-6; and

WHEREAS, a home-rule municipality may enforce ordinances necessary to protect health, life, and property and to preserve the good government, order, and security of the municipality and its inhabitants, pursuant to Texas Local Government Code, Title 2, Subtitle D, Chapter 54, Section 54.004, as amended; and

WHEREAS, the City shall have the power to enact and enforce ordinances necessary to protect health, life and property and to prevent and summarily abate and remove all nuisances, and to preserve and enforce good government and order and security of the City and its inhabitants, pursuant to Mesquite City Charter, Article III, Section 2; and

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

WHEREAS, the City 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 criminal activities; and

WHEREAS, to combat juvenile crime, juvenile violence and juvenile gang activity in the Dallas Fort Worth Metroplex area, many cities in the D-FW Metroplex area, including the City, have adopted ordinances requiring curfew hours for minors; and

WHEREAS, a curfew for those under the age of seventeen (17) is in the interest of the public health, safety and general welfare and will help attain the foregoing objectives and to diminish the undesirable impact of such conduct on the citizens of the City; and

WHEREAS, pursuant to Chapter 370.002 of the Texas Local Government Code, the City Council reviewed the effects of the City's curfew ordinance on the community and on the problems the ordinance was intended to remedy, conducted public hearings on the need to continue the ordinance, and abolish, continue, modify or re-adopt the ordinance; and

WHEREAS, the City Council has found that there is a need to continue the ordinance in effect as modified herein and to adopt the juvenile curfew ordinance in the form attached hereto as Exhibit A and incorporated herein by reference.

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

SECTION 1. The findings contained in the preamble of this ordinance are determined to be true and correct and are hereby adopted as a part of this ordinance.

SECTION 2. Article VII, "Curfew Hours for Minors," of Chapter 10, "Offenses – Miscellaneous" of the Mesquite City Code is hereby repealed in its entirety and replaced with a new Article VII, "Curfew Hours for Minors," in the form attached hereto as Exhibit A and incorporated herein by reference.

SECTION 3. All ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

SECTION 4. In the event of an irreconcilable conflict between the provisions of another previously adopted ordinance of the City of Mesquite and the provisions of this Ordinance, the provisions of this Ordinance shall be controlling.

SECTION 5. Should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

SECTION 6. Any person (as defined in Chapter 1, Section 1-2 of the Code of the City of Mesquite, Texas, as amended) violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction thereof, shall be

subject to a fine not to exceed \$500.00 for each offense, provided, however, if the maximum penalty provided for by this ordinance for an offense is greater than the maximum penalty provided for the same offense under the laws of the State of Texas, the maximum penalty for violation of this ordinance for such offense shall be the maximum penalty provided by the laws of the State of Texas. Each day or portion of a day any violation of this ordinance continues shall constitute a separate offense.

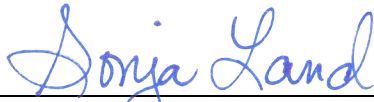
SECTION 7. This ordinance shall take effect and be in force from and after five days after publication.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 7th day of September 2021.



Bruce Archer
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

ARTICLE VII. CURFEW HOURS FOR MINORS**Sec. 10-195. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Curfew hours means:

- (1) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. of the following day; and
- (2) 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday.

Emergency means 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.

Establishment means 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 means:

- (1) A person who, under courts 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 means any person under seventeen (17) years of age.

Operator means 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 means a person who is:

- (1) A natural parent, adoptive parent or step-parent of another person; or
- (2) At least eighteen (18) years of age and authorized by a parent or guardian to have the care and custody of a minor.

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 buildings, transport facilities, theaters, game rooms, and shops.

Remain means:

- (1) To linger or stay; 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.

Serious bodily injury means 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. 2996, § 1, 10-3-94; Res. No. 32-1997, 9-15-97; Res. No. 36-2000, 8-21-00; Res. No. 43-2003, 8-18-03; Res. No. 49-2006, § 1, 8-21-06; Res. No. 27-2009, § 1, 8-17-09; Res. No. 23-2012, § 1, 9-4-12; Res. No. 38-2015, § 1, 8-17-15)

Sec. 10-196. Offenses.

- (a) A minor commits an offense if he or she remains in any public place or on the premises of any establishment within the city during curfew hours.
- (b) A parent or guardian of a minor commits an offense if he or she knowingly permits, or by insufficient control allows the minor to remain in any public place or on the premises of any establishment within the city during curfew hours.
- (c) The owner, operator, or any employee of an establishment commits an offense if he or she knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

(Ord. No. 2996, § 1, 10-3-94; Res. No. 32-1997, 9-15-97; Res. No. 36-2000, 8-21-00; Res. No. 43-2003, 8-18-03; Res. No. 49-2006, § 1, 8-21-06; Res. No. 27-2009, § 1, 8-17-09; Res. No. 23-2012, § 1, 9-4-12; Res. No. 38-2015, § 1, 8-17-15)

Sec. 10-197. Defenses.

- (a) It is a defense to prosecution under section 10-196 that the 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 without any detour or stop;
 - (3) In a motor vehicle involved in interstate travel;
 - (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 the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the police department about the minor's presence;
 - (7) Attending an official school, religious, or other recreational activity supervised by adults 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 adults 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) Married or had been married or had disabilities or minority removed in accordance with Chapter 31 of the Texas Family Code.
- (b) It is a defense to prosecution under 10-196(c) that the owner, operator, or employees 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.

(Ord. No. 2996, § 1, 10-3-94; Res. No. 32-1997, 9-15-97; Res. No. 36-2000, 8-21-00; Res. No. 43-2003, 8-18-03; Res. No. 49-2006, § 1, 8-21-06; Res. No. 27-2009, § 1, 8-17-09; Res. No. 23-2012, § 1, 9-4-12; Res. No. 38-2015, § 1, 8-17-15)

Sec. 10-198. Enforcement.

Before taking any enforcement action under this section, a police officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in section 10-197 is present.

(Ord. No. 2996, § 1, 10-3-94; Res. No. 32-1997, 9-15-97; Res. No. 36-2000, 8-21-00; Res. No. 43-2003, 8-18-03; Res. No. 49-2006, § 1, 8-21-06; Res. No. 27-2009, § 1, 8-17-09; Res. No. 23-2012, § 1, 9-4-12; Res. No. 38-2015, § 1, 8-17-15)

Sec. 10-199. Penalties.

- (a) A person who violates a provision of this article is guilty of a separate offense for each day or part of a day during which the violation is committed, continued or permitted. Each offense, upon conviction, is punishable by a fine not to exceed \$500.00.
- (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 10-196(a) of this section and shall refer the minor to juvenile court.

(Ord. No. 2996, § 1, 10-3-94; Res. No. 32-1997, 9-15-97; Res. No. 36-2000, 8-21-00; Res. No. 43-2003, 8-18-03; Res. No. 49-2006, § 1, 8-21-06; Res. No. 27-2009, § 1, 8-17-09; Res. No. 23-2012, § 1, 9-4-12; Res. No. 38-2015, § 1, 8-17-15; Ord. No. 4701, § 1(Exh. A(X.G.)), 8-19-19)