

AN ORDINANCE TO ESTABLISH A CURFEW FOR MINORS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MOBILE as follows:

I. Definitions. As used in this Ordinance, the following words and phrases shall have the following meanings:

(A) CURFEW HOURS means:

(1) Night Time Curfew Hours:

(i). For all areas of the City except that area defined as the "Downtown entertainment district":

11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday and Thursday until 6:00 a.m. of the following day;

12:01 a.m. until 6:00 a.m. on any Saturday or Sunday. Provided, that regardless of the day of the week upon which it falls, on each holiday recognized by the city, the evening curfew hours for the night before the holiday and the morning curfew hours for the holiday shall both begin at 12:00 a.m. (midnight) and shall extend until 6:00 a.m.;

(ii) For that area defined as the "Downtown entertainment district":

10:00 p.m. on any day until 5:00 a.m. on the following day.

The curfew applicable to the Downtown entertainment district shall not apply on New Year's Eve, during "Bayfest", and during Mardi Gras.

(2) Day Time Curfew Hours:

9:00 a.m. until 2:30 p.m. on any Monday, Tuesday, Wednesday, Thursday or Friday during which Mobile County Public Schools are in session.

(B) CURFEW CENTER means a place to temporarily maintain custody of a minor prior to release to a parent, legal guardian or legal custodian or, if appropriate, to the Strickland Youth Center or such other place designated by the Juvenile Court. The curfew center shall be located at the Crisis Center at the Strickland Youth Center unless and until a more suitable location is proposed by the Mayor and approved by the Council.

(C) DOWNTOWN ENTERTAINMENT DISTRICT means the area located in downtown Mobile and bounded as follows: on the south by

Government Street from its intersection with Water Street to its intersection with Dearborn Street, thence by Dearborn Street from its intersection with Government Street to its intersection with Conti Street, thence by Conti Street from its intersection with Dearborn Street to its intersection with Washington Avenue; on the east by Water Street from its intersection with Government Street to its intersection with St. Louis Street; on the north by St. Louis Street from its intersection with Water Street to its intersection with Washington Avenue; and on the west by Washington Avenue from its intersection with St. Louis Street to its intersection with Conti Street.

- (D) 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.
- (E) ESTABLISHMENT means a 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.
- (F) GUARDIAN means:
- (1) a natural 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.
- (G) IN SESSION means the status of a school during the fall or spring term when students are required to attend the school. A school is not in session during its summer break, during any holiday or any other scheduled general student vacation day or part of a day observed by the school.
- (H) MINOR means any person who has not yet reached his or her 18th birthday (or for purposes of the Daytime Curfew Hours, his or her 17th birthday), who has not been emancipated under Alabama law.
- (I) 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.
- (J) PARENT means a person who is
- (1) a natural parent, adoptive parent, or step-parent of another person; or

- (2) at least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.
- (K) 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 school, hospitals, apartment houses, office buildings, transport facilities and shops.
- (L) REMAIN means to:
 - (1) linger or stay; or
 - (2) fail to leave when requested to do so by a police officer or owner, or operator, or other person in control of the premises.

Provided, however, that law enforcement officers shall have discretion as to whether to request a minor to leave a public place prior to commencing an enforcement action under this section without making such a request.
- (M) SERIOUS BODILY INJURY means physical injury that creates a substantial risk of death or that causes death, permanent disfigurement, or the protracted loss or impairment of the function of any bodily member or organ.

II. Offenses.

- (A) Minors. A minor commits an offense if he or she is in or remains in a public place during curfew hours. A minor or any other "child" as defined in *Code of Alabama* 1975 § 12-15-102 subject to the exclusive jurisdiction of the juvenile court who is adjudicated by the juvenile court as having violated this section shall be subject to the maximum penalties, if any, provided by state law for status offenses by juveniles, and shall be subject to the orders, care, and rehabilitation authority of the juvenile court. Without limiting the generality of the foregoing, the juvenile court is authorized in its discretion to order payment of a fine of up to one hundred dollars (\$100.00) and to order any other disposition authorized by *Code of Alabama* 1975, § 12-15-215 or otherwise provided by state law.
- (B) A parent or guardian of a minor commits an offense if he or she intentionally, recklessly, knowingly or negligently 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, in violation of this Juvenile Curfew Ordinance.
- (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, in violation of this Juvenile Curfew Ordinance.

- (D) The provisions of this section shall apply to minors who are suspended or expelled from school, unless they are emancipated under Alabama law.
- (E) A minor who is taught by a certified teacher pursuant to § 16-28-5; or enrolled in a church school as defined in § 16-28-1(2); or who is exempt from attending public school under § 16-28-6; or who is otherwise exempted from the public and private school systems in compliance with State law, and the minor's parent or guardian, are not in violation of the Daytime Curfew Hours if the minor is in or remains in a public place with the permission of the parent or guardian.
- (F) A minor who is engaged in interstate travel is not in violation of this Juvenile Curfew Ordinance.
- (G) A minor who is 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 is not in violation of this Juvenile Curfew Ordinance.
- (H) A separate offense shall be deemed committed for each violation of this section.

III. Defenses.

- (A) It is a defense to prosecution under Section II, that the minor was:
 - (1) accompanied by the minor's parent or guardian;
 - (2) on a lawful errand at the direction of the minor's parent or guardian, without any unnecessary detour or stop;
 - (3) engaged in an employment activity, or going to or returning home from an employment activity, by a direct route without any unnecessary detour or stop;
 - (4) involved in an emergency;
 - (5) 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, except that this defense does not apply to a violation of the Daytime Curfew Hours.
 - (6) attending an official school activity, religious activity, 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, by a direct route without any unnecessary detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Mobile, a civic organization, or another similar entity that takes responsibility for the minor;

- (7) married or had been married;
 - (8) attending a bona fide work-study program recognized by the United States Department of Education or any public school system, or going to or returning home from such a program by a direct route without any unnecessary detour or stop and within one hour of the commencement or termination of the work-study activity;
 - (9) a student enrolled in a bona fide college, university, or other institution of higher education, or a student enrolled in a bona fide vocational, technical, or other similar school intended to prepare the student for employment;
 - (10) involved in receiving health care services, or traveling to or from locations where health care services are provided within one hour of the commencement or termination of such health care services.
- (B) It is a defense to prosecution under Section II (C) of this Juvenile Curfew Ordinance that the owner, operator, or employee of an establishment promptly notified the police department that a minor was present on the premises of an establishment during curfew hours and refused to leave.
- (C) It is a defense to prosecution under this Juvenile Curfew Ordinance for a violation of the Daytime Curfew Hours that:
- (1) the school in which the minor was enrolled or otherwise required to attend was not in session;
 - (2) the minor was on the premises of the school in which the minor was enrolled or otherwise required to attend;
 - (3) the minor was participating in a school-approved work study program, or was going to the work study program or returning to home or school from the work-study program without any unnecessary detour or stop;
 - (4) the minor was on a lunch break from a school that permits an off campus lunch program;

- (5) the minor was on an excused absence from the school in which the minor was enrolled or otherwise required to attend and had permission from a school official; or
- (6) the minor was a high school graduate or had received a high school equivalency certificate.

IV. Enforcement, Procedures and Reporting.

- (A) Before taking any enforcement action under this Section, a law enforcement officer shall have the discretionary authority to make inquiry of the apparent offender's age and reason for being in the public place, for the purposes of determining probable cause and whether any defense applies. A law enforcement officer shall have all discretion provided by state or federal law to determine whether to do any of the following:
 - (1) issue a verbal warning and release the minor;
 - (2) release the minor to a parent, guardian, legal custodian of the minor or other suitable person able to provide supervision and care for the minor and issue verbal counsel and warning as may be appropriate;
 - (3) transport the minor to the Curfew Center; or
 - (4) take such other discretionary, lawful action which will in the judgment of the law enforcement officer protect the best interests of the minor.
- (B) When a minor has been transported to the Curfew Center, reasonable attempts shall be made to notify the minor's parent or legal guardian as soon as possible to report to the Curfew Center to pick up the minor. At the Curfew Center, a law enforcement officer will make a reasonable attempt to do one or more of the following within three (3) hours of the minor's detention at the Curfew Center:
 - (1) issue a verbal warning and release the minor;
 - (2) release the minor to a parent, guardian, legal custodian of the minor or other suitable person able to provide supervision and care for the minor and issue verbal counsel and warning as may be appropriate;
 - (3) refer and transport the minor to the Strickland Youth Center;
 - (4) file an appropriate petition in Juvenile Court for violation of this Curfew Ordinance;

- (5) file an appropriate request with the Alabama Department of Human Resources to conduct an investigation; or
 - (6) take such other discretionary, lawful action which will in the judgment of the law enforcement officer protect the best interests of the minor.
- (C) Enforcement of this Ordinance against a minor shall be made by petition filed in Juvenile Court. Enforcement of this Ordinance against a parent, guardian or against an owner, operator or employee of a business establishment shall be by issuing a Uniform Nontraffic Citation and Complaint (“UNTCC”) enforceable in Municipal Court. When more than one minor under the control of the same parent or guardian is found in violation of the provisions of this section in the same act or incident, that parent or custodian shall be issued no more than one citation for that particular occurrence.
- (D) This Subsection IV shall not be interpreted in a manner which would affect or diminish the immunity or discretionary authority, conferred by Alabama and Federal law on law enforcement officers and cities.

V. Penalties.

- (A) Violation by a Minor – A violation by a minor is subject to the jurisdiction of the juvenile court and penalties are set forth in Section II (A) of this Juvenile Curfew Ordinance.
- (B) Other Violations –
- (1) The Uniform Nontraffic Citation and Complaint (“UNTCC”) shall be the charging instrument for a violation of Section II (B) or (C) of this Juvenile Curfew Ordinance.
 - 2) The first violation shall be punishable by a fine of \$100.
 - 3) The second violation within one year and all subsequent violations thereafter shall be punishable by a fine of up to \$500 or by imprisonment of up to six (6) months or by both fine and imprisonment.
 - 4) In sentencing violations of this Juvenile Curfew Ordinance, the Municipal Court may consider a suspended sentence, probation, community service, or, in lieu of or in addition to any penalty that may be imposed, ordering the violator to obtain counseling or attend classes to improve parenting and child raising skills.

- VI. Severability. The provisions of this ordinance are severable. If any part of the Ordinance is declared invalid or unconstitutional, the remainder of the Ordinance shall not be affected thereby, but shall remain in full force and effect.
- VII. Effective Date, Sunset, and Extension. This Ordinance shall be in full force and effect from and after its adoption and publication as required by law, as follows:
- (A). The night time curfew hours applicable to the “downtown entertainment district” shall be effective immediately, and shall remain in effect unless and until changed by the Council;
- (B). The night time curfew hours applicable to all areas except the “downtown entertainment district” shall be effective from and after 11:00 p.m. on November 1, 2011, and shall remain in effect until 12:00 a.m. on December 31, 2012, unless extended thereafter by Ordinance duly adopted by the Council;
- (C). The day time curfew hours shall be effective from and after 12:00 a.m. on January 1, 2012, and shall remain in effect until 12:00 a.m. on December 31, 2012, unless extended thereafter by Ordinance duly adopted by the Council.
- VIII. Reporting. The Mayor is requested to report and make recommendations to the Council no later than June 1, 2012, and November 1, 2012, concerning the effectiveness of and the continuing need for this curfew. The purpose of this report is to provide information to the Council so that the Council can judge the effectiveness and continued necessity of this curfew and determine whether the curfew shall remain in effect beyond the sunset date specified in the preceding section. The Council requests that the Mayor’s report include at a minimum the following information:
- (A). The practicality of enforcing the curfew and any problems with enforcement that have been encountered;
- (B). The impact and cost of enforcing the curfew;
- (C). The number of minors that have been transferred to and/or detained at curfew centers during the reporting period;
- (D). The number of petitions filed with the Juvenile Court during the reporting period;
- (E). The number of UNTCCs issued during the reporting period;

- (F). The impact that enforcement of the curfew has had on juvenile crime;
- (G). Other information and data which the Mayor believes to be relevant in assessing the effectiveness of the curfew; and,
- (H). Information from citizens, if any, regarding whether the curfew has been administered and enforced fairly, including information regarding the age, gender, and race of those charged or detained for violations of the curfew.

ADOPTED: OCT 04 2011


CITY CLERK