

ORDINANCE NO. 1161

AN ORDINANCE ESTABLISHING A CURFEW FOR MINORS; SETTING FORTH DEFINITIONS, CREATING OFFENSES FOR MINORS, PARENTS, AND GUARDIANS OF MINORS, AND BUSINESS ESTABLISHMENTS VIOLATING CURFEW REGULATIONS; PROVIDING DEFENSES; PROVIDING FOR ENFORCEMENT BY THE POLICE DEPARTMENT; PROVIDING FOR WAIVER BY THE MUNICIPAL COURT OF JURISDICTION OVER A MINOR WHEN REQUIRED UNDER THE TEXAS FAMILY CODE; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; PROVIDING A PUBLICATION CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, the City of Benbrook 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, a curfew for those under the age of 17 will be in the interest of the public health, safety, and general welfare and will help to attain the foregoing objectivities and to diminish the undesirable impact of such conduct on the citizens of the City of Benbrook.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BENBROOK, TEXAS;

SECTION 1 Definitions

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

3. 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.
4. GUARDIAN means:
 - (a) a person who, under court order, is the guardian of the person of a minor; or
 - (b) a public or private agency with whom a minor has been placed by the court.
5. MINOR means any person under 17 years of age.
6. OFFICER means a police officer.
7. 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.
8. PARENT means a person who is:
 - (a) a natural parent, adoptive parent, or step-parent of another person; or
 - (b) at least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.
9. 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, and shops.
10. REMAIN means to:
 - (a) linger or stay; or
 - (b) fail to leave premises when requested to do so by an officer or the owner, operator, or other person in control of the premises.
11. SERIOUS BODILY INJURY means bodily injury that creates substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member of origin.

SECTION 2

Offenses

1. A minor commits an offense if he remains in any public place or on the premises of any establishment within the City during curfew hours.
2. A parent or guardian of a minor commits an offense if he knowingly permits, or by insufficient control allows the minor to remain in any public place or on the premises of an establishment within the City during curfew hours.

3. The owner, operator, or any employee of an establishment commits an offense if he knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

SECTION 3 Defenses

It is a defense to prosecution under Subsection 2 that the minor was:

- (a) accompanied by the minor's parent or guardian;
- (b) on an errand at the direction of the minor's parent or guardian, without any detour or stop;
- (c) in a motor vehicle involved in interstate travel;
- (d) engaged in an employment activity, or going to or returning from an employment activity, without any detour or stop;
- (e) involved in an emergency;
- (f) 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;
- (g) attending an official school, religious, or another recreational activity supervised by adults and sponsored by the City of Benbrook, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home without any detour or stop, an official school, religious, or another recreational activity supervised by adults and sponsored by the City of Benbrook, a civic organization, or another similar entity that take responsibility for the minor;
- (h) exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right to assembly; or
- (i) married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code.

SECTION 4 Enforcement

Before taking any official action under this Section, an officer shall ask the apparent offender's age and reason for being in a 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 Subsection 3 is present.

SECTION 5 Penalty Clause

1. A person who violates a provision of this section 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.
2. 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 Subsection 2 (1) of this ordinance and shall refer the minor to the juvenile court.

SECTION 6 Cumulative Clause

This ordinance shall be cumulative of all provisions of ordinances and of the Code of the City of Benbrook, Texas (1985), as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event the conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 7 Severability Clause

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared unconstitutional by a valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this ordinance, since the same would have been enacted by the City Council without incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 8 Savings Clause

All rights and remedies of the City of Benbrook are expressly saved as to any and all violations of the provisions of the Benbrook Municipal Code (1985), as amended, or any ordinances affecting the issuance of permits and the payment of fees which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 9
Publication in Pamphlet Form

The city secretary of the City of Benbrook is hereby authorized to publish this ordinance in book or pamphlet form for general distribution among the public, and the operative provisions of this ordinance as so published shall be admissible in evidence in all courts without further proof than the productive thereof, as provided in Section 3.10 of the Charter of the City of Benbrook.

SECTION 10
Engrossment and Enrollment

The city secretary of the City of Benbrook is hereby directed to engross and enroll this ordinance by copying the caption, penalty clause, and effective date clause of this ordinance in the minutes of the City Council and by filing the ordinance in the ordinance records of the City.

SECTION 11
Publication in Official Newspaper

The city secretary of the City of Benbrook is hereby directed to publish the caption, penalty clause, publication clause and effective date clause of this ordinance for two (2) days in the official newspaper of the City of Benbrook, as authorized by Section 52.013 of the Local Government Code.

SECTION 12
Effective Date

This ordinance shall take effect at midnight on January 4, 2004, after its passage and publication as required by law, and it is so ordained.

PASSED AND APPROVED THIS 4th **day of** December, 2003

Felix T. Hebert, Mayor

ATTEST

Joanna King, City Secretary

Adopted: December 4, 2003

Effective: January 4, 2004