

ORDINANCE NO. 2004-15

AN ORDINANCE AMENDING CHAPTER 74, DIVISION 2, OF THE CODE OF ORDINANCES OF THE CITY OF NEDERLAND, TEXAS, BY REPEALING SEC. 74-36 AND SEC. 74-37, BY ADDING NEW SECTIONS 74-36 THROUGH 74-41 TO PROVIDE CURFEW HOURS FOR MINORS AND TO REQUIRE COMPULSORY SCHOOL AGE MINORS TO BE IN SCHOOL (WITH EXCEPTIONS) AND TO IMPOSE PARENTAL DUTIES; PROVIDING FOR OFFENSES AND DEFENSES; PROVIDING FOR REPEAL OF ALL ORDINANCES AND POLICIES IN CONFLICT OR PARTS OF ORDINANCES AND POLICIES IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY NOT TO EXCEED \$500.00.; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

WHEREAS, The City Council held a public hearing on November 22, 2004 to receive public input as to 1) the effect of this Ordinance on the City and any problems the Ordinance is intended to remedy; 2) the need, if any, to repeal the existing Ordinance No. 388, as amended on May 23, 1994, establishing curfew hours for minors; 3) the need, if any, to enact this Ordinance establishing curfew hours for minors in order to satisfy constitutional requirements.

WHEREAS, the City Council finds that it has a compelling interest in protecting juveniles, reducing crime, and involving parents in the control of their minor children.

WHEREAS, the City Council finds that curfew hours for minors would materially assist in achieving the purposes of this Ordinance, to wit:

- (A) To promote the general welfare and protect the general public through the reduction of juvenile violence and crime within the City;
- (B) To promote the safety and well-being of the City's youngest citizens, persons under the age of seventeen (17), whose inexperience renders them particularly vulnerable to becoming participants in unlawful activities, particularly unlawful drug activities, and to being victimized by older perpetrators of crime;
- (C) To promote the compulsory attendance in school by school age minors; and
- (D) To foster and strengthen parental responsibilities for minors.

WHEREAS, based upon testimony provided at the public hearing, including statistical evidence supporting the position that previous juvenile curfew ordinances have reduced crime and that this Ordinance will do likewise, the City Council deems it in

the public interest of the City to repeal the juvenile curfew Ordinance as delineated in Sec. 74-36 and Sec. 74-37 of the Code of Ordinances of the City of Nederland and to adopt curfew hours for minors and provisions related thereto, as set forth herein below.

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

Section 1. That Article II (Minors) of Chapter 74 (Offenses and Miscellaneous Provisions) of the Code of Ordinances of the City of Nederland is amended by repealing the existing Sec. 74-36 (Hours Established) and Sec. 74-37 (Parental Responsibility).

Section 2. That Article II (Minors) of Chapter 74 (Offenses and Miscellaneous Provisions) of the Code of Ordinances of the City of Nederland is amended by adding new Sec. 74-36, Sec. 74-37, Sec. 74-38, Sec. 74-39, Sec. 74-40, Sec. 74-41, and Sec. 74-42 to read as follows:

SEC. 74-36. - DEFINITIONS.

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

City means the city limits of the City of Nederland, Texas.

Curfew hours for minors means:

Sunday	11:00 p.m. to 5:00 a.m.
Monday	11:00 p.m. to 5:00 a.m.
Tuesday	11:00p.m. to 5:00 a.m.
Wednesday	11:00p.m. to 5:00 a.m.
Thursday	11:00 p.m. to 5:00 a.m.
Friday	12:00 a.m. to 5:00 a.m.; or
Saturday	12:00 a.m, to 5:00 a.m.

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, any situation requiring immediate action to prevent serious bodily injury or loss of life, or a serious medical condition of sudden onset.

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

Parent means a person who is:

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

Guardian means a person who:

- (a) Under court order, is the guardian of the person of a minor; or
- (b) Is a public or private agency with whom a minor has been placed by a court.

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, the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, shops, shopping malls, and shall include parking facilities adjacent to the same.

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, such as theaters and game rooms.

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.

Remain means to:

- (a) Linger or stay; or
- (b) 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.

Intentionally, knowingly, recklessly, or with criminal negligence has the meaning(s) provided in the Texas Penal Code.

SEC. 74-37. OFFENSES.

- (a) A minor who has reached the age of ten (10) years commits an offense if he or she intentionally, knowingly, recklessly, or with criminal negligence remains in or upon any public place, or remains in any motor vehicle operating or parked therein or thereon, or remains on the premises of any establishment within the city during curfew hours for minors.
- (b) A parent or guardian of a minor commits an offense if he or she intentionally, knowingly, recklessly, or with criminal negligence permits, or by insufficient control allows a minor to remain in or upon any public place, or to remain in any motor vehicle operating or parked therein or thereon, or to remain on the premises of any establishment within the city during curfew hours for minors.
- (c) The owner, operator, or any employee of an establishment commits an offense if he or she intentionally, knowingly recklessly, or with criminal negligence allows a minor to remain upon the premises of the establishment during curfew hours for minors.

SEC. 74-38. DEFENSES.

- (a) It is a defense to prosecution under Sec. 74-37. that the minor was:
 - (1) Accompanied by the minor's parent or guardian;
 - (2) Accompanied by an adult authorized by a parent or guardian;
 - (3) On an errand at the direction of the minor's parent or guardian, without any detour or stop; and the minor has in his or her possession a writing signed by the parent containing the following information: the name, signature, address and telephone of the parent/guardian authorizing the errand, the telephone number where the parent/guardian may be reached during the errand, the name of the minor, a brief description of the errand, the minor's destination(s) and the time period the minor is authorized to be engaged in the errand;
 - (4) In a motor vehicle involved in interstate travel;
 - (5) Engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
 - (6) Engaged in, participating in or traveling to or from any event, function or activity for which application of Sec. 74-37. would contravene his rights protected by the Texas or United States Constitutions;
 - (7) Involved in an emergency;
 - (8) 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;

- (9) 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, as well as going to or returning home from the same, without any detour or stop;
 - (10) 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;
 - (11) Married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code;
 - (12) Engaged in lawful volunteer or charity work at a recognized charity institution or is going to or coming from such activity without detour or stop.
- (b) It is a defense to prosecution under subsection 74-37(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 for minors and refused to leave.

SEC. 74-39. SCHOOL AGE MINORS TO BE IN SCHOOL.

- (a) *Compulsory school age minor to be in attendance at school; parental duties imposed.*
- (1) No minor between the ages of six (6) and sixteen (16), inclusive, other than a minor that has been suspended or expelled from school, shall be at any public place within the city except in attendance at school between the hours of 9:00 a.m. and 3:00 p.m. during any official school day when school is in session.
 - (2) Each parent or legal guardian of a minor between the ages of six (6) and sixteen (16), inclusive, shall have a duty to prohibit the minor from acting contrary to Sec. 74-39(a)(1).
- (b) *Children suspended or expelled from school to remain under supervision; parental duties imposed.* If a minor between the ages of six (6) and sixteen (16) inclusive, is suspended or expelled from school, then each parent or guardian of the minor shall have the following duties for the duration of the suspension or expulsion:
- (1) The duty to personally supervise the minor, or to arrange for a responsible adult to supervise the minor, at the times that the minor would have been required to be in attendance at school under (a) (1) above had he or she not been suspended or expelled; and,
 - (2) The duty to prohibit the minor from being at any public place at the times that the minor would have been required to be in attendance at school under (a) (1) above had he or she not been suspended or expelled.
- (c) No minor between the ages of ten (10) and sixteen (16), inclusive, that has been suspended or expelled from school shall be in any public place at the times that he or she would have been required to be in attendance at school under (a) (1) above had he or she not been suspended or expelled.
- (d) Any minor who has reached the age of ten (10) years or parent or guardian of a minor who intentionally, knowingly, recklessly or with criminal negligence violates any provision of Sec. 74-39 commits an offense and, upon conviction, shall be guilty of a misdemeanor, which shall be punishable as provided in Sec. 74-41.

SEC. 74-40. DEFENSES.

- (a) It is a defense to prosecution under Sec. 74-40 (a) and (b) that:
- (1) The minor is suspended or expelled from school and is accompanied by a parent or guardian or responsible adult selected by a parent or guardian to supervise the minor;
 - (2) The minor has been authorized by virtue of his or her regular school schedule to be off of the school campus at the time the minor is found

to be at any place within the City away from the school;

- (3) The minor has written proof from school authorities excusing him or her from attending school at that particular time;
- (4) The minor is attending an official school activity off-campus; or
- (5) The minor is engaged in any event or circumstance provided as a defense in Sec. 74-38 (a) (3) (4) (6) (7) (10) or (11) above.

SEC. 74-41. PENALTIES.

- (a) A person who violates any provision of Sec. 74-37 or Sec. 74-39 commits a Class C misdemeanor offense and, upon conviction, shall be punishable by a fine not to exceed five hundred dollars (\$500.00).
- (b) A person who violates a provision of this chapter is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted.
- (c) When required by Section 52.08 of the Texas Family code, as amended, the municipal court shall waive original jurisdiction over a minor who violates Sec. 74-37 or Sec. 74-39 and shall refer the minor to juvenile court.

SECTION 74-42. Enforcement Provisions

Notwithstanding the penal effects of this article, the Chief of Police is encouraged to develop alternative enforcement strategies which may include, but need not be limited to, the return of minors to their residences, counseling with minors and their parents or guardians, the issuance of warning citations to minor's or their parents or guardians. The enforcement strategies shall be promulgated in writing to members of the police department so that this article may be enforced in uniform manner.

Section 3. That all ordinances, or parts of ordinances, or policies or parts of policies in conflict with this ordinance, are hereby repealed, to the extent of conflict only.

Section 4. That if any section, subsection, sentence, clause or phrase of this Ordinance, or the application of same to a particular set of persons or circumstances should for any person be held to be invalid, such invalidity shall not affect the remaining portions of this ordinance, and to such end the various portions and provisions of this Ordinance are declared to be severable.

Section 5. That this being an ordinance which imposes a penalty, its caption and penalty shall be published at least twice (2) in the official newspaper of the City of Nederland. This ordinance shall take effect immediately after the last date of publication.

PASSED AND APPROVED by the City Council of the City of Nederland this the _____ day of _____, 2004.

R. A. Nugent, Mayor
City of Nederland, Texas

ATTEST:

LaDonna Floyd, City Clerk
City of Nederland, Texas

APPROVED AS TO FORM AND LEGALITY:

Richard D. Hughes, City Attorney
City of Nederland, Texas