

ORDINANCE O-858-07

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GLENN HEIGHTS, TEXAS, MODIFYING, CONTINUING AND RENEWING THE CURFEW FOR MINORS ADOPTED BY ORDINANCE NO. 785-04;DEFINING TERMS; CREATING OFFENSES FOR MINORS, PARENTS AND GUARDIANS OF MINORS AND BUSINESS ESTABLISHMENTS FOR VIOLATING CURFEW REGULATIONS; PROVIDING AFFIRMATIVE DEFENSES; PROVIDING FOR ENFORCEMENT BY THE POLICE DEPARTMENT; PROVIDING FOR PENALTIES AND WAIVER BY THE MUNICIPAL COURT OF JURISDICTION OVER A MINOR WHEN REQUIRED UNDER THE TEXAS FAMILY CODE; PROVIDING FOR REVIEW OF THIS ORDINANCE WITHIN THREE YEARS AFTER THE DATE OF INITIAL ADOPTION AND EVERY THIRD YEAR THEREAFTER; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND, PROVIDING AN EFFECTIVE DATE.

WHEREAS, by Ordinance No. 785-04, adopted on November 1, 2004, the City Council enacted a curfew for minors that was intended to decrease juvenile violence, juvenile gang activity and crime by persons under the age of 17 in the City of Glenn Heights; and

WHEREAS, the City of Glenn Heights has an obligation to continue 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, pursuant to the terms of Section 370.002, Texas Local Government Code, the City Council of the City of Glenn Heights has reviewed the Ordinance's effect on the community and the problems the Ordinance was intended to remedy; and

WHEREAS, the City Council has conducted public hearings on the need to continue the ordinance at a Special Called Meeting of the local governing body at a public meeting duly noticed and held on Monday, October 29, 2007; and

WHEREAS, based on such consideration and input, the City Council has determined that the purposes of the Curfew have been accomplished and that the Juvenile Curfew contained in Ordinance No. 785-04 should be modified only by the inclusion of hours when public schools are in operation in the definition of "Curfew Hours" and that otherwise the terms of the Ordinance should be continued and renewed;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GLENN HEIGHTS, TEXAS, THAT:

SECTION 1. All the recitals are found to be true and correct and incorporated herein for all purposes.

SECTION 2. The terms and provisions of the Juvenile Curfew Ordinance contained in Ordinance No. 785-04 are hereby modified with regard to inclusion of hours when public schools are in operation within the definition of "Curfew Hours" and all other terms and provisions of such Ordinance are continued and renewed so that the same shall hereinafter read as follows:

“ARTICLE 8.05 CURFEW HOURS FOR MINORS

SEC. 8.05.001 DEFINITIONS.

A. In this article:

1. Curfew Hours means:
 - (a) Those hours when any public school attended by minors who live in the City of Glenn Heights are in operation and during which such minors are required to be in attendance at such school;
 - (b) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday until 6:00 a.m. the following day;
 - (c) 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday; and
 - (d) 9:00 a.m. until 2:30 p.m. on Monday, Tuesday, Wednesday, Thursday or Friday.
2. Emergency means any unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, yet 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 yet 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 a court.
5. Minor means any person under 17 years of age.
6. Operator means any individual, firm, association, partnership or corporation operating, managing or conducting an establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.
7. 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.
- 8. Public Place means any place to which the public or a substantial group of the public has access and includes, yet is not limited to, streets, highways and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities and shops.
- 9. 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.
- 10. Serious Bodily Injury means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement or protracted loss of impairment of the function of any bodily member or organ.

SEC. 8.05.002 OFFENSES.

- A. A minor commits an offense if he remains, walks, runs, stands, drives or rides about in or upon 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, walk, stand, drive or ride about in or upon 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 knowingly allows a minor to remain, walk, run, stand, drive or ride about in or upon the premises of the establishment during curfew hours.

SEC. 8.05.003 DEFENSES.

- A. It is an affirmative defense to prosecution under Section 8.05.002 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 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 of Glenn Heights, the DeSoto Independent School District, the Red Oak Independent School District, 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 of Glenn Heights, the DeSoto Independent School District, the Red Oak Independent School District, 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 free exercise of religion, freedom of speech and the right of assembly; or
 9. Married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code.
- B. It is an affirmative defense to prosecution under Section 8.05.002 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 the curfew hours and refused to leave.
- C. It is affirmative defense to prosecution under Section 8.05.002 with respect to the curfew hours of 9:00 a.m. until 2:30 p.m. on Monday, Tuesday, Wednesday, Thursday or Friday, that the offense occurred during the scheduled vacation of or on a holiday observed by the school in which the minor is enrolled; or that the minor has graduated from high school or received a high school equivalency certificate; or that the minor has permission to be absent from the school or be in a public place from an authorized school official or a parent or guardian. In the case of a minor being educated in a home school, a parent or guardian shall be deemed a school official.

SEC. 8.05.004 ENFORCEMENT.

Before taking any enforcement action under this Ordinance, 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 ordinance unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no affirmative defense in Section 8.05.003 is applicable.

SEC. 8.05.005 PENALTIES.

- A. A person who violates a provision of this Ordinance 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 five hundred dollars (\$500).

- 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 8.05.002 A.of this Ordinance and shall refer the minor to juvenile court.”

SECTION 3. REVIEW OF CURFEW ORDINANCE. This Ordinance shall be reviewed every third year prior to November 1 of such year as required by Section 370.002 of the Texas Local Government Code. The first review shall be conducted no later than November, 2010, and every third year thereafter. Such review shall be conducted following a public hearing regarding the need to continue the Ordinance and the City Council shall have the option to continue, abolish or modify the Ordinance based upon their review of the Ordinance’s effects on the community and on the problems the Ordinance is intended to remedy.

SECTION 4. REPEALING CLAUSE. All provision of the ordinances of the City of Glenn Heights in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the ordinances of the City of Glenn Heights, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

SECTION 5. SEVERABILITY. If any section, article, phrase, paragraph, sentence, clause, phrase or word shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this Ordinance, which shall remain in full force and effect, and to this end, the provisions of this Ordinance are declared severable.

SECTION 6. EFFECTIVE DATE. This Ordinance shall become effective upon passage and publication in accordance with law.

PASSED, APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF GLENN HEIGHTS, TEXAS, THIS THE 29th DAY OF OCTOBER, 2007.

**CITY OF GLENN HEIGHTS
CLARK CHOATE
MAYOR**

**ATTEST:
OTHEL MURPHREE
CITY SECRETARY**