

ORDINANCE NO. 2019 -

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING CHAPTER 54, MISCELLANEOUS OFFENSES, OF THE SAN MARCOS CITY CODE BY ADOPTING ARTICLE 3, CURFEW, CREATING CURFEW HOURS FOR MINORS; SETTING OUT VIOLATIONS AND DEFENSES; ESTABLISHING PENALTIES FOR THE VIOLATION THEREOF; PROVIDING FOR PUBLICATION; AND DECLARING AN EFFECTIVE DATE.

RECITALS:

1. In August 1994, the City of San Marcos adopted an ordinance establishing a curfew for minors. Subsequent to that date state law was passed requiring that cities hold a public hearing every three years and formally readopt a juvenile curfew ordinance; otherwise, the curfew would expire. The City Council last readopted the juvenile curfew by Ordinance 2015-13, which expired April 22, 2019, three years after the date of readopting.

2. The Chief of Police for the City of San Marcos provided statistical evidence concerning the effectiveness of the juvenile curfew ordinance. A public hearing was conducted on November 6, 2019, to provide public input on the necessity of again adopting a curfew for minors.

3. The City Council has determined that the existence of the juvenile curfew has aided in decreasing juvenile violence, juvenile gang activity, and other criminal activity related to the lack of maturity and experience exhibited by persons under the age of seventeen years.

4. The City of San Marcos has an obligation to provide for the protection of minors from each other and from other persons, for the enforcement of parental control of and responsibility for their children, for the protection of the general public and for the reduction of incidence of juvenal criminal activities.

5. The City Council of the City of San Marcos believes that a curfew for those under seventeen years of age will be in the interest of the public health, safety, and general welfare, and will help to attain the above set forth objectives and to diminish the undesirable impact of such conduct on the citizens of the City of San Marcos.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. The following language, identical to the pre-existing Article 3, Curfew, of Chapter 54, Miscellaneous Offenses, of the City Code of San Marcos is adopted:

ARTICLE 3. CURFEW

DIVISION 1. GENERALLY

Secs. 54.051--54.075. Reserved.

DIVISION 2. MINORS

Sec. 54.076. Definitions.

In this division:

Chief of police means the city chief of police.

Curfew hours means:

- (1) Eleven p.m. until 12:00 midnight on any Sunday, Monday, Tuesday, Wednesday or Thursday;
- (2) Midnight until 6:00 a.m. on any day; and
- (3) Nine a.m. until 2:30 p.m. on any Monday, Tuesday, Wednesday, Thursday or Friday.

Direct route means the shortest path of travel through a public place to reach a final destination without any detour or stop along the way.

Emergency means 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 retail stores, restaurants and places of amusement or entertainment.

Juvenile processing office means a place designated by the juvenile court judge to which a minor in custody for a violation of this division will be taken to await pickup by a parent or juvenile authorities.

Minor means any person under 17 years of age.

Operator means any person who owns, operates, manages or is in control of 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 or adoptive parent of a minor;
- (2) A court-appointed guardian of a minor; or
- (3) At least 21 years of age and authorized by a parent or court-appointed 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, alleys, sidewalks, playgrounds, parks, plazas, public buildings and establishments. Public place does not include schools, however, during the curfew hours described in this section.

Remain means to:

- (1) Linger or stay unnecessarily; or
- (2) Fail to leave premises when requested to do so by a peace officer or the owner, operator or other person in control of the premises.

Sec. 54.077. Reserved.

Sec. 54.078. Curfew offenses.

(a) A minor commits an offense if the minor remains in any public place within the city during curfew hours.

(b) A parent of a minor commits an offense if the parent knowingly permits or by insufficient control allows the minor to remain in any public place within the city during curfew hours.

(c) An operator commits an offense if the operator's establishment has normal business hours during the curfew hours described in subsections (1) and (2) of the definition of curfew hours in section 54.076 and the operator fails to post a sign at each entrance to the establishment containing the following or similar language:

NOTICE OF CURFEW HOURS
San Marcos City Ordinance

Persons under 17 years of age are not to remain in this business during the following hours:

1. Between 11:00 p.m. and 12:00 midnight on any Sunday, Monday,

Tuesday, Wednesday or Thursday.

2. Between 12:00 midnight and 6:00 a.m. of any day.

Violations may be reported to the San Marcos Police Department.

Sec. 54.079. Defenses.

(a) It is a defense to prosecution under section 54.078 that the minor was:

(1) Accompanied by the minor's parent;

(2) On an errand that was reasonably necessary, in that an adult was unable or unavailable to perform the errand; the errand could not be postponed until after curfew hours; the errand was at the direction of the minor's parent; and the minor was using a direct route;

(3) In a motor vehicle involved in interstate travel;

(4) Engaged in an employment activity, including but not limited to newspaper delivery, and was using a direct route;

(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 a peace officer about the minor's presence;

(7) Attending an official school or religious activity or returning home by a direct route from an official school or religious activity;

(8) Exercising First Amendment rights protected by the United States Constitution, the free exercise of religion, freedom of speech and the right of assembly;

(9) Married or had been married or had disabilities of minority removed in accordance with V.T.C.A., Family Code ch. 31; or

(10) Carrying a valid college identification card identifying the minor as a college student.

(b) It is a defense to prosecution under section 54.078 with respect to the curfew hours described in subsection (3) of the definition of curfew hours in section 54.076 that:

- (1) The minor was a high school graduate or has equivalent certification;
- (2) The minor was on an excused absence from his place of schooling;
or
- (3) The minor's school was not in session.

Sec. 54.080. Enforcement.

(a) A peace officer, upon finding a minor in violation of subsection 54.078(a) will:

- (1) Ascertain the name and address of the minor;
- (2) Have the authority to issue a citation to the minor; and
- (3) Order the minor to go promptly home by a direct route.

(b) A peace officer, upon finding a minor in violation of subsection 54.078(a), may take the minor into custody and deliver the minor to a juvenile processing office if reasonable grounds exist to believe the minor has engaged in delinquent conduct or conduct indicating a need for supervision as described in V.T.C.A., Family Code §51.03.

(c) The parents of a minor may be cited for violation of subsection 54.078(b) upon the minor receiving a second citation for violation of subsection 54.078(a).

Sec. 54.081. Penalty; referral to juvenile authorities.

Any minor who violates subsection 54.078(a) is subject to the penalty provided in section 1.015 and is also subject to referral to juvenile authorities under V.T.C.A., Family Code, title 3.

SECTION 2. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the remaining provisions of this ordinance shall remain in effect as if the unconstitutional or invalid portion had not been adopted.

SECTION 3. All ordinances and resolutions or parts of ordinances or resolutions in conflict herewith are hereby repealed.

SECTION 4. Any person violating any provision of this ordinance commits a misdemeanor and is subject to the penalty provided in Section 1.015 of the San Marcos City Code upon conviction.

SECTION 5. This ordinance will take effect after publication of its caption in a newspaper of general circulation.

PASSED AND APPROVED on first reading on November 6, 2019.

PASSED, APPROVED AND ADOPTED on second reading on November 19, 2019.

Jane Hughson
Mayor

Attest:

Approved:

Jamie Lee Case
City Clerk

Michael J. Cosentino
City Attorney