



## Memorandum

TO: Bert Lumbreras, City Manager  
Mayor Jane Hughson and the San Marcos City Council

FROM: Bob Klett, Interim Chief of Police

DATE: October 7, 2019

SUBJECT: Juvenile Curfew Ordinance

The expired juvenile curfew ordinance was most recently passed in April, 2015 after original adoption and consecutive renewals since August 1994. The Texas Local Government Code requires a municipality that has passed a juvenile curfew ordinance to review it every three years. Failure to review the ordinance means it expires at the end of the three years.

The curfew ordinance review time has lapsed on the most recent ordinance in April and so the curfew needs to be readopted.

### **Texas Local Government Code**

Sec. 370.002. REVIEW OF JUVENILE CURFEW ORDER OR ORDINANCE. (a) Before the third anniversary of the date of adoption of a juvenile curfew ordinance by a general-law municipality or a home-rule municipality or an order of a county commissioners court, and every third year thereafter, the governing body of the general-law municipality or home-rule municipality or the commissioners court of the county shall:

- (1) review the ordinance or order's effects on the community and on problems the ordinance or order was intended to remedy;
  - (2) conduct public hearings on the need to continue the ordinance or order; and
  - (3) abolish, continue, or modify the ordinance or order.
- (b) Failure to act in accordance with Subsections (a)(1)-(3) shall cause the ordinance or order to expire.

The most recent expired City of San Marcos ordinance stated as follows:

### **City of San Marcos Juvenile Curfew Ordinance**

**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) 9:00 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.

(Ord. No. 1994-68, § 1 (16-81), 8-22-94; Ord. No. 2001-38, § 1, 5-21-01; Ord. No. 2004-21, 5-10-04; Ord. No. 2009-28, § 1, 6-2-09; Ord. No. 2012-16, § 2, 4-3-12)

**Cross reference**— Definitions and rules of construction generally, §§ 1.002, 1.003.



**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.

*(Ord. No. 1994-68, § 1 (16-81), 8-22-94; Ord. No. 2001-38, § 1, 5-21-01; Ord. No. 2004-21, 5-10-04; Ord. No. 2009-28, § 1, 6-2-09; Ord. No. 2012-16, § 2, 4-3-12)*

**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.
- (Ord. No. 1994-68, § 1 (16-81), 8-22-94; Ord. No. 2001-38, § 1, 5-21-01; Ord. No. 2004-21, 5-10-04; Ord. No. 2009-28, § 1, 6-2-09; Ord. No. 2012-16, § 2, 4-3-12)*

**Sec. 54.080. - Enforcement.**

- (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).
- (Ord. No. 1994-68, § 1 (16-81), 8-22-94; Ord. No. 2001-38, § 1, 5-21-01; Ord. No. 2004-21, 5-10-04; Ord. No. 2009-28, § 1, 6-2-09; Ord. No. 2012-16, § 2, 4-3-12)*

**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.

*(Ord. No. 1994-68, § 1 (16-81), 8-22-94; Ord. No. 2001-38, § 1, 5-21-01; Ord. No. 2004-21, 5-10-04; Ord. No. 2009-28, § 1, 6-2-09; Ord. No. 2012-16, § 2, 4-3-12)*

The Texas Code of Criminal Procedure gives officers the authority to issue a juvenile a citation or to take a juvenile home or to school, when appropriate, if the juvenile is found to be in violation



of the ordinance. Without such an ordinance, officers would not have the authority to compel a juvenile to go home after midnight or return the juvenile to school during the day.

### **Texas Code of Criminal Procedures**

#### **Art. 45.059. CHILDREN TAKEN INTO CUSTODY FOR VIOLATION OF JUVENILE CURFEW OR ORDER.**

- (a) A peace officer taking into custody a person younger than 17 years of age for violation of a juvenile curfew ordinance of a municipality or order of the commissioner's court of a county shall, without unnecessary delay:
- (1) release the person to the person's parent, guardian, or custodian;
  - (2) take the person before a justice or municipal court to answer the charge; or
  - (3) take the person to a place designated as a juvenile curfew processing office by the head of the law enforcement agency having custody of the person.
- (b) A juvenile curfew processing office must observe the following procedures:
- (1) the office must be an unlocked, multipurpose area that is not designated, set aside, or used as a secure detention area or part of a secure detention area;
  - (2) the person may not be secured physically to a cuffing rail, chair, desk, or stationary object;
  - (3) the person may not be held longer than necessary to accomplish the purposes of identification, investigation, processing, release to a parent, guardian, or custodian, or arrangement of transportation to school or court;
  - (4) a juvenile curfew processing office may not be designated or intended for residential purposes;
  - (5) the person must be under continuous visual supervision by a peace officer or other person during the time the person is in the juvenile curfew processing office; and
  - (6) a person may not be held in a juvenile curfew processing office for more than six hours.
- (c) A place designated under this article as a juvenile curfew processing office is not subject to the approval of the juvenile board having jurisdiction where the governmental entity is located.

A review of curfew citations written during the past three years fiscal years revealed that officers wrote 21 citations (night 17, day 4) in 2015/16, 31 citations (night 19, day 12) in 2016/17, and 38 citations (night 12, day 26) in 2017/18.