

# Curfew

**ORDINANCE NO. 2008-03**

**AN ORDINANCE ADOPTING JUVENILE CURFEW REGULATIONS; DEFINING TERMS; MAKING IT AN OFFENSE FOR MINORS, PARENTS AND GUARDIANS OF MINORS VIOLATING CURFEW REGULATIONS; PROVIDING DEFENSES; PROVIDING FOR ENFORCEMENT BY THE LAW ENFORCEMENT; PROVIDING FOR WAIVER BY THE PRESIDING COURT OF JURISDICTION OVER A MINOR WHEN REQUIRED UNDER THE TEXAS FAMILY CODE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN PAMPHLET FORM; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS, the City of Deport, Texas is a Type A general-law municipality located in Lamar and Red River County, created in accordance with the provisions of Chapter 6 of the local Government Code and operating pursuant to the enabling legislation of the State of Texas; and**

**WHEREAS, the City Council has determined that there has been an increase in juvenile violence, juvenile gang activity, and crime by persons under the age of 17 in the City of Deport; and**

**WHEREAS, persons under the age of 17 and 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 Deport 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, the crimes being committed by juveniles include serious offenses such as property damage, criminal mischief, disorderly conduct, and other gang-related activities; and**

**WHEREAS, it has been determined that this activity takes place during the curfew hours established by this ordinance, including the hours after dark and school hours; 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 objectives and to diminish the undesirable impact of such conduct on the citizens of the City of Deport.**

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

**SECTION 1.**

**DEFINITIONS**

In this Ordinance:

- (1) Curfew Hours means:
  - a. 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. or Thursday until 6:00a.m. on the following day; and
  - b. 8:30 a.m. until 3:00 p.m. on any Monday, Tuesday, Wednesday, Thursday, or Friday; and
  - c. 11:01 p.m. until 6:00 a.m. on any Saturday or Sunday.
- (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 a court.
- (5) Minor means any person under 17 years of age.
- (6) Officer means any law enforcement officer of Lamar or Red River Counties.
- (7) Operator means any individual, firm, association, partnership, or cooperation operating, managing, or conducting business at any establishment. The term includes the members or partners of any 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, parks and the common areas and parking lots of schools, hospitals, apartment houses, office buildings, transportation facilities, commercial shopping centers, and shops.

(10) Remains 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 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.

## Section2.

### 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 any 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.

## SECTION3.

### DEFENSES

- (1) It is a defense to prosecution under Section 2 of this ordinance, 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 home 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 law enforcement about the minor's presence;
  - (g) Attending an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Deport, a civic organization, a school district 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 Deport, a civic organization, a school district or another similar entity that takes 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 of assembly; or
  - (i) Married or had been married or had disabilities of minority removed in accordance with Chapter 13 of the Texas Family Code.
- (2) With respect to an apparent violation of this ordinance occurring during the curfew hours established by Section 1, subparagraph (1)(b) of this ordinance, it shall be a defense to prosecution that the offense occurred at a time when the school in which the minor is enrolled was not in session; 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 school or be in a public place from an authorized school official. In the case of a child being educated in a home school, a parent shall be deemed a school official for the purposes of this section.
- (3) It is a defense to prosecution under Section 2, paragraph (3) 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 and refused to leave.

#### SECTION 4.

##### ENFORCEMENT

- (1) Before taking any enforcement action under this Ordinance, an officer shall as 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 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.
- (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 Section 2, paragraph (1) of this Ordinance and shall refer the minor to juvenile court.

#### SECTION 5.

This ordinance shall be cumulative of all provisions of ordinances of the City of Deport, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

#### SECTION 6.

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 the 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 the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

#### SECTION 7.

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Five Hundred Dollars (\$500.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

#### SECTION 8.

All rights and remedies of the City of Deport are expressly saved as to any and all violations of the provisions of Ordinance No. 2008-03, or any other ordinances affecting curfew 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, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

#### SECTION 9.

The City Secretary of the City of Deport 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 production thereof.

**SECTION10.**

The City Secretary of the City of Deport is hereby directed to publish in the official newspaper of the City of Deport, the caption, penalty clause, and effective date clause of this ordinance (one) day as authorized by Section 52.011 of the Local Government Code. (one issue of the newspaper if the official newspaper is a weekly paper)

**SECTION11.**

This ordinance shall be in full force and effect from and after its passage and publication as required by law, and it is so ordained.

**PASSED AND APPROVED ON THIS 10 DAY OF JULY, 2008.**

**MAYOR Gene Foster**

**ATTEST:**

**Jacqueline Dangerfield**

**CITY SECRETARY**

**EFFECTIVE: JULY 31, 2008**