

## ORDINANCE NO. 562

AN ORDINANCE AMENDING SECTION 13-5, "CURFEW HOURS FOR MINORS," OF CHAPTER 13, "OFFENSES AND MISCELLANEOUS PROVISIONS," OF THE CODE OF THE CITY OF RIVER OAKS (1965), AS AMENDED; DEFINING TERMS; CREATING OFFENSE FOR MINORS, PARENTS AND GUARDIANS OF MINORS, AND BUSINESS ESTABLISHMENTS VIOLATING CURFEW REGULATIONS; PROVIDING DEFENSES; PROVIDING FOR ENFORCEMENT BY THE POLICE DEPARTMENT; PROVIDING FOR WAIVER BY THE MUNICIPAL COURT OF JURISDICTION OVER A MINOR WHEN REQUIRED UNDER THE TEXAS FAMILY CODE; PROVIDING A PENALTY NOT TO EXCEED \$500; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL OTHER ORDINANCES, REPEALING ORDINANCE NO. 451; PROVIDING A SAVING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

**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 River Oaks; and

**WHEREAS**, persons under the age of 17 are 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 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**, 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;

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

**SECTION 1.**

That Chapter 13, Section 13-5, "OFFENSES AND MISCELLANEOUS PROVISIONS", of the Code of the City of River Oaks, is hereby amended to read as follows:

**"Sec. 13-5. Curfew Hours for Minors**

(a) Definitions. In this section:

(1) Curfew Hours means:

(A) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. of the following day; and

(B) 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday; and

(C) 8:30 a.m. until 3:00 p.m. on any Monday, Tuesday, Wednesday, Thursday, or Friday.

(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 a police officer of the city of River Oaks.
  - (7) 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 officer 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, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.
  - (10) Remain 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.
- (b) 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.

(c) Defenses.

- (1) It is a defense to prosecution under Subsection (b) 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 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 police department about the minor's presence;
  - (G) 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, or going to or returning home without any detour or stop, 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;
  - (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

- (l) married or had been married or had the disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code.
- (2) It is a defense to prosecution under Subsection (b)(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.
- (3) It is a defense to prosecution under Subsection (a)(1)(C) that:
  - (A) the offense occurred at a time when the school in which the minor was enrolled was not in session; or
  - (B) the minor has graduated from high school or received a high school equivalency certificate; or
  - (C) the minor has permission to be absent from school or to 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 purposes of this section.
- (d) Enforcement.

Before taking any enforcement action under this Section, an 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 section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in Subsection © is present.

(e) Penalties.

- (1) A person who violates a provision of the Section 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 \$500.
- (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 Subsection (b)(1) of this Section and shall refer the minor to juvenile court.”

## **SECTION 2.**

This ordinance shall be cumulative of all provisions of ordinances of the city, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed. Ordinance No. 451, as amended, is hereby specifically repealed in its entirety.

## **SECTION 3.**

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 4.**

All rights and remedies of the City are expressly saved as to any and all violations of the provisions of Section 13-5 of the Code of Ordinances of the City of River Oaks (1965), as amended, 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 5.**

The City Secretary of the city 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.

**SECTION 6.**

The City Secretary of the City is hereby directed to publish this ordinance, or its caption and penalty clause, in one issues of the official City newspaper as required by Chapter 7, Section 4 of the Charter of the City.

**SECTION 7.**

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 12<sup>TH</sup> DAY OF SEPTEMBER, 2000.**

/s/ JACK ADKISON  
MAYOR

ATTEST:

/s/ BONNIE GIBBS  
CITY SECRETARY