

**ORDINANCE NO. 081118-1**

**AN ORDINANCE OF THE CITY OF BUDA, TEXAS, TO ESTABLISH A CURFEW FOR PERSONS UNDER 17 YEARS OF AGE; CONTAINING DEFINITIONS; MAKING IT UNLAWFUL FOR ANY PERSON SUBJECT TO A CURFEW TO REMAIN IN ANY PUBLIC PLACE OR ON THE PREMISES OF ANY ESTABLISHMENT WITHIN THE CITY DURING CURFEW HOURS; MAKING IT UNLAWFUL FOR ANY PARENT OR GUARDIAN OF A PERSON SUBJECT TO A CURFEW TO KNOWINGLY PERMIT, OR BY INSUFFICIENT CONTROL ALLOW, SUCH PERSON TO REMAIN IN ANY PUBLIC PLACE OR ON THE PREMISES OF ANY ESTABLISHMENT WITHIN THE CITY DURING CURFEW HOURS; PROVIDING DEFENSES TO PROSECUTION FOR VIOLATIONS; AND PROVIDING A PENALTY NOT TO EXCEED \$500 FOR EACH VIOLATION OF ANY PROVISION OF THIS ORDINANCE.**

**WHEREAS**, the City has experienced an increase in the incidence of juveniles who roam the City unsupervised during the early morning hours, leading to an increase in crimes involving minors such as criminal mischief, public drinking, and drug use; and

**WHEREAS**, persons under the age of 17 are particularly susceptible by their lack of maturity, judgment and experience, to participate in unlawful activities and to be victims of crime; and

**WHEREAS**, the City of Buda has an obligation to provide for the protection of minors from each other and from other persons, for the enhancement 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 illegal and unacceptable activities of minors are not easily controlled by existing laws and ordinances; and

**WHEREAS**, a goal of a limited curfew is to remove minors from City streets between the hours that many crimes occur; and

**WHEREAS**, it is necessary to protect the rights of minors who, for legitimate reasons, are out during specified curfew hours and use the least restrictive means to implement a curfew for minors; and

**WHEREAS**, it is important that parents act responsibly with regard to their minor children; and

**WHEREAS**, the parent shall retain the right to make decisions regarding his or her child in all other areas;

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

**I. FINDINGS OF FACT INCORPORATED**

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

**II. CURFEW REGULATIONS**

**(a) Scope**

The provisions of this Ordinance shall apply within the City Limits (i.e., incorporated municipal boundary).

**(b) Definitions**

The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

***Civic organization*** means a nonprofit corporation or association formed for the use, benefit and enjoyment of its members to achieve religious, recreational, charitable, municipal and/or educational pursuits.

***Curfew hours*** means:

- (1) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday until 6:00 a.m. of the following day; and
- (2) 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday.

***Emergency*** means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term “emergency” 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.

***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.

***Guardian*** means:

- (1) A person who, under court order, is the guardian of the person of a minor; and
- (2) A public or private agency with whom a minor has been placed by a court.

**Minor** means any person under 17 years of age.

**Operator** means any individual, firm, association, partnership or corporation operating, managing or conducting any establishment. The term “operator” 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 parent, adoptive parent or step-parent of another person; or
- (2) At least 18 years of age and authorized by a parent or 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 and the common areas of schools, hospitals, apartment house, office buildings, transport facilities and shops.

**Remain** means to:

- (1) Linger or stay; 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.

**(c) Compliance Required**

It shall be unlawful for any person to violate the provisions of this Ordinance.

**(d) Offenses**

- (1) A minor commits an offense if he or she remains, walks, runs, stands, drives or rides about 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 or she 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 or she knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

**(e) Defenses**

(1) It is a defense to prosecution that the minor was, at the time of the alleged offense:

- (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) Engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
- (D) Involved in an emergency;
- (E) 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;
- (F) Attending an official school, religious or other recreational activity supervised by adults and sponsored by the City of Buda, 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 Buda, a civic organization or another similar entity that takes responsibility for the minor;
- (G) Engaged, participating in, or traveling to or from any event, function, or activity for which the application of this Ordinance would contravene the minor's rights protected by the United States Constitution including, but not limited to; First Amendment rights such as the free exercise of religion, freedom of speech, or the right of assembly; or
- (H) Married or had been married or had disabilities of minority removed in accordance with V.T.C.A., Family Code Chapter 31.
- (I) In a motor vehicle involved in Interstate Travel.

It is a defense to prosecution 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.

### **III. ENFORCEMENT**

#### **(a) Enforcement**

- (1) A peace officer, upon finding a minor in violation of this Ordinance, shall:
  - a. Ascertain the name and address of the Minor;
  - b. Ascertain the name and address of the Minor's Parent(s) or Guardian(s);
  - c. Ask the Minor's reason for being in a public place and determine if a defense to prosecution is present;
  - d. If the officer reasonably believes that the Minor is violating this ordinance and that no defense as described in section II (e) exists, the officer may issue the minor a municipal court citation for a violation of said ordinance;
  - e. Notify a Parent or Guardian to pick up the minor at the location where the minor is being detained, advise the Parent or Guardian of the fact that the minor was found in violation of this ordinance. The Officer shall solicit cooperation in the future along with a warning that any subsequent violation will possibly result in prosecution of the Parent(s) or Guardian(s) pursuant to section II d.(2) of this Ordinance.
  - f. Submit a copy of the citation to the City of Buda Municipal Court which shall then send a letter to the Parent(s) or Guardian(s) of the Minor advising of the fact that the Minor was charged.
- (2) After following the procedures described above, the police officer may take the Minor into custody and deliver the Minor to the juvenile detention center if the officer reasonably believes that the Minor is in violation of this Ordinance, that no defense is present, and:
  - a. The Minor has received a municipal court misdemeanor citation for a violation of this Ordinance on more than one (1) previous occasion; or
  - b. Reasonable grounds exist to believe that the Minor has engaged in delinquent conduct or conduct indicating a need for supervision in accordance with §51.03 and §52.01 of the Texas Family Code.

#### **(b) Criminal Prosecution**

Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding five hundred dollars (\$500.00) per infraction, except as may be otherwise expressly provided by state law. Each infraction of a provision of this Ordinance shall constitute a separate offense. An offense under this Ordinance is a Class C misdemeanor.

**(c) Civil Remedies**

Nothing in this Ordinance shall be construed as preempting or waiving the rights of third parties from instituting any action for remedies against anyone who violates this Ordinance. Nothing in this Ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this Ordinance and to seek remedies as allowed by law, including, but not limited to the following:

- (1) injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance;
- (2) a civil penalty up to five hundred dollars (\$500.00) per infraction, for committing acts in violation of the Ordinance or failing to take action necessary for compliance with the Ordinance; and other available relief.

**IV. EFFECTIVE DATE**

This Ordinance shall be and become effective immediately upon and after its passage and publication as may be required by governing law.

**V. REPEALER**

All ordinances or parts of ordinances in force when the provisions of this Ordinance becomes effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of such conflict.

**VI. SEVERABILITY**

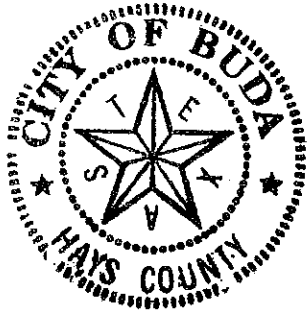
Should any part, sentence or phrase of this Ordinance be determined to be unlawful, void or unenforceable, the validity of the remaining portions of this Ordinance shall not be adversely affected. No portion of this Ordinance shall fail or become inoperative by reason of the invalidity of any other part. All provisions of this Ordinance are declared to be severable.

**VII. PROPER NOTICE AND MEETING**

It is hereby officially found and determined that the meeting at which this Ordinance was adopted was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

PASSED on the first reading this the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

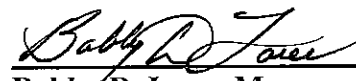
PASSED AND APPROVED on this the \_18th\_ day of November\_, 2008.



Attest:

  
Toni Milam, City Secretary

CITY OF BUDA, TEXAS

  
Bobby D. Lane, Mayor