

ORDINANCE NO. 23-01

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PELICAN BAY, TARRANT COUNTY, TEXAS CONTINUING ITS JUVENILE CURFEW; PROVIDING DEFINITIONS, CREATING OFFENSES; CREATING DEFENSES; PROVIDING ENFORCEMENT REQUIREMENTS; PROVIDING A PENALTY CLAUSE; DETERMINING THAT THIS ORDINANCE WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PUBLICATION CLAUSE; PROVIDING AN ENROLLMENT AND ENGROSSMENT CLAUSE; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the City of Pelican Bay ("The City") is a Type A General Law municipality located in Tarrant County, Texas, created in accordance with the provisions of the TEXAS LOCAL GOVERNMENT CODE, Title 2, Chapter 6, and operating pursuant to enabling legislation of the State of Texas; and

WHEREAS, the City enacted Ordinance No. 170 on June 8¹, 2004, *An Ordinance Reenacting Hours of Curfew for Children; Providing a Penalty; Providing for Repeal; Providing/or Publication; and Providing and Effective Date*; and

WHEREAS, the City enacted said ordinance after determining that there had been an increase in criminal activity among individuals under the age of 17 and that such increase required new restrictions and enforcement to curb the problem; and

WHEREAS, persons under the age of 17 are more prone to perpetrate crime or to be the victim of crime because of their youth and lack of experience; and

WHEREAS, the City has an obligation to provide for the protection of minors and children, for the protection of the general public, and for the reduction of the incidence of juvenile criminal activities; and

WHEREAS, the TEXAS LOCAL GOVERNMENT CODE Sec. 370.002 requires the City to review its juvenile curfew ordinance every three years, to conduct a public hearing regarding the review, and to act on whether to abolish, continue, or modify the ordinance, which the City has completed, and

WHEREAS, the City, prior to the consideration of this Ordinance, held the required public hearing and;

WHEREAS, the reenactment and continuation of 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 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 PELICAN BAY, TEXAS:

Section 1. Definitions.

A. Curfew Hours means:

- 1) 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday night, until 6:00 a.m. of the following day; and
- 2) 11:00 p.m. until 6:00 a.m. on any Friday or Saturday night.

B. Emergency means:

Any unforeseen combination of circumstances or the resulting state that calls for immediate action. The word includes but is not limited to a fire, natural disaster or automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

C. Establishment means:

Any privately owned place of business operated for profit to which the public is invited, including but not limited to any place of amusement or entertainment.

D. Guardian means:

- 1) Any 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.

E. Minor means:

Any person under the age of seventeen (17) years of age.

F. Operator means:

Any individual, firm, association, partnership or corporation that is operating, managing or conducting any establishment. The word includes the members or partners of a partnership or association, and the officers of a corporation, and any adult employee in charge of its operation.

G. Parent means:

A person who is:

- 1) A natural parent, adoptive parent or step-parent of a minor, and
- 2) Anyone else at least eighteen (18) years of age who is authorized by a parent or guardian to have the care and custody of a minor.

H. Public Place means:

Any place to which the public, or a substantial group of the public, has access. The words include but are not limited to streets, alleys, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities and shops.

I. Remain means:

- 1) To linger or stay on or in premises; and
- 2) To fail to leave premises when requested to do so by a police officer of the owner, operator, or other person in control of the said premises.

J. 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.

Section 2. Offenses.

- A. A minor commits an offense if he or she remains in any public place or on the premises of any establishment within the City of Pelican Bay during curfew hours.
- B. A parent or guardian of a minor, or other adult person having care and custody 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 of Pelican Bay during curfew hours.
- C. The owner or operator, or any other adult person or employee in charge of any establishment commits an offense if he or she does knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

Section 3. Defenses.

- A. It is a defense to prosecution under Section 2 of this ordinance if the minor was:
 - 1) Accompanied by the minor's parents or guardian;
 - 2) On an errand at the direction of the minor's parent or guardian without detour or stop;
 - 3) In a motor vehicle involved in interstate travel;
 - 4) Engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
 - 5) Involved in an emergency;
 - 6) On the sidewalk abutting the minor's residence, or abutting the residence of a next-door neighbor, providing the neighbor did not complain to the police department about the minor's presence;
 - 7) Attending an official school, religious or other recreational activity supervised by adults and sponsored by the City of Pelican Bay, a civic organization or other similar entity that takes responsibility for the minor, or going to or returning home from such activity, without any detour or stop;

8) Exercising rights protected by the FIFTH AMENDMENT of the United States Constitution, such as free exercise of religion, or freedom of speech, or the right of a peaceable assembly; or

9) Married or had been married, or had otherwise had the disabilities of minority removed in accordance with Chapter 31 of the TEXAS FAMILY CODE.

B. It is a defense to prosecution under Subsection C of Section 2 of this ordinance if the owner, operator, or other adult person or employee in charge of an establishment promptly notified the police department that a minor was present on the premises of the said establishment during curfew hours and the minor refused to leave.

Section 4. Enforcement.

Before taking any enforcement action under this Ordinance, 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 Ordinance unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in Section 3 is present.

Section 5. Penalties.

A. A person who violates this Ordinance is guilty of a separate offense for each day or party of a day during which the violation is committed, continued, or permitted. Each offense, upon conviction or plea, is punishable by a fine not to exceed \$500.

B. When required by TEXAS FAMILY CODE Sec. 51.08, as amended, the municipal court shall waive original jurisdiction over a minor who violates this Ordinance and shall refer the minor to juvenile court.

Section 6. Open Meetings Act Compliance.

That the meeting at which this Ordinance was approved was in all things conducted in strict compliance with the TEXAS OPEN MEETINGS ACT, TEXAS GOVERNMENT CODE, Chapter 551.

Section 7. Severability.

That it is hereby declared that the sections, articles, subsections, paragraphs, sentences, clauses, and phrases of this ordinance are severable and if any phrase, clause, sentence, paragraph, subsection, article, or section of this ordinance shall be declared void, ineffective, or unconstitutional by a valid judgment or final decree of a court of competent jurisdiction, such voidness, ineffectiveness, or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, subsections, articles, or sections of this ordinance since the same would have been enacted by the City Council without the incorporation herein of any such void, ineffective, or unconstitutional phrase, clause, sentence, paragraph, subsection, article, or section.

Section 8. Publication.

The City Secretary is hereby authorized and directed to publish the caption of this Ordinance, together with the penalty provision contained herein, in the manner and for the length of time prescribed by TEXAS LOCAL GOVERNMENT CODE, Chapter 52, Subchapter B, Section 52.011.

Section 9. Engrossment and Enrollment.


The City Secretary of the City is hereby directed to engross and enroll this ordinance by copying the caption, penalty clause, publication clause and effective date clause in the minutes of the City Council and filing the ordinance in the ordinance records of the City.

Section 10. Effective Date.

That this Ordinance shall become effective from and after its passage and publication as required by law.

AND SO, IT IS RESOLVED.

PASSED and approved this 14th day of February, 2023.



Tamra Olague, Mayor

ATTEST:



Cynthia Daniels, City Secretary