

**THIS IS A DRAFT AND WILL BE REPLACED BY THE FINAL,
SIGNED ORDINANCE ADOPTED BY THE CITY COUNCIL.**

AN ORDINANCE

**MODIFYING, READOPTING, AND CONTINUING IN
EFFECT THE CITY'S YOUTH CURFEW ORDINANCE;
DE-CRIMINALIZING VIOLATIONS OF ORDINANCE BY
CHILDREN; AND PROVIDING FOR PUBLICATION.**

WHEREAS, the City of San Antonio on April 30, 2015 enacted a curfew restricting unsupervised minors between 10 and 16 years of age from public places during certain hours; and

WHEREAS, Section 370.002 of the Texas Local Government Code requires that before every third anniversary of the adoption of a juvenile curfew ordinance, the governing body of a home rule city must review the ordinance's effect on the community and on the problems the ordinance was intended to remedy, conduct public hearings on the need to continue the ordinance, and abolish, continue, or modify the ordinance, or else the ordinance will automatically expire; and

WHEREAS, the San Antonio Police Department has reviewed the effects of the Youth Curfew on the community and on the problems it was intended to remedy and presented that review to the Public Safety Committee on April 24, 2018 and to the City Council on May 31, 2018, prior to the continuation and re-adoption of the Youth Curfew through the passage of this ordinance; and

WHEREAS, after careful consideration, the City Council has determined that it is in the best interest of the citizens of the City of San Antonio to modify and continue the Youth Curfew Ordinance in effect; and

WHEREAS, the City Council believes that revisions to the current ordinance will improve its effectiveness;

WHEREAS, in order to accomplish such revisions, it is necessary to modify Chapter 21, Article V of the City Code of San Antonio, Texas; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The Youth Curfew Ordinance No. 2015-04-30-0331, enacted on April 30, 2015, is hereby modified, readopted, and continued as set out below, with strikethroughs indicating deletions and underlines indicating additions.

SECTION 2. Chapter 21, Article V of the City Code of San Antonio, Texas will remain in full force and effect, save and except as modified by this ordinance, until 2021, unless sooner terminated or extended by City Council ordinance, as follows:

Sec. 21-121. - Definitions.

[As used in this article the following words and terms shall have the meanings respectively ascribed:]

- (a) ~~[Minor]~~ *Child* shall mean any person who is ten (10) years of age or older and under seventeen (17) years of age; or, seventeen (17) years of age or older and under eighteen (18) years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before 17 years of age ~~[and over nine (9) years of age].~~
- (b) *Parent* shall mean a person who is the natural or adoptive parent of a person. As used herein, "parent" shall also include a court appointed guardian or other person eighteen (18) years of age or older, authorized by the parent, by a court order, or by the court appointed guardian to have the care and custody of a person.
- (c) *Guardian* shall mean any person to whom custody of a ~~[minor]~~ child has been given by a court order.
- (d) *Emergency* shall include but not be limited to fire, natural disaster, an automobile accident, or obtaining immediate medical care for another person.
- (e) *Public place* shall mean[s] 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.
- (f) *Juvenile Curfew Processing Office* shall be consistent with Art. 45.059 of the Texas Code of Criminal Procedure and shall include the Juvenile Case Management Department of the San Antonio Municipal Court.

Sec. 21-122. -Violations and Offenses.

- (a) It shall be ~~[unlawful]~~ a violation of this ordinance for a ~~[minor]~~ child to purposefully remain, walk, run, stand, drive or ride about in or upon any public place in the city between the hours of 11:00 p.m. and 6:00 a.m.
- (b) It shall be ~~[unlawful]~~ a violation of this ordinance for a ~~[minor]~~ child to purposefully remain, walk, run, stand, drive or ride about in or upon any public place in the city between the hours of 9:00 a.m. and 2:30 p.m. on a Monday, Tuesday, Wednesday, Thursday or Friday on school days only.

- (c) It shall be unlawful for the parent or guardian having legal custody of a ~~[minor]~~ child to knowingly allow or permit the ~~[minor]~~ child to be in violation of the curfew imposed in subsections (a) and (b).

Sec. 21-123. – ~~[Defenses]~~ Exceptions.

It ~~[is a defense]~~ shall not be a violation of ~~[to prosecution under]~~ section 21-122 of this article that:

- (a) The ~~[minor]~~ child was accompanied by his or her parent, guardian or another adult approved by the parents;
- (b) The ~~[minor]~~ child was on emergency errand directed by his or her parent or guardian;
- (c) The ~~[minor]~~ child was attending a school, government sponsored, or religious activity or was going to or coming from a school, religious, or government sponsored activity without detour or stop;
- (d) The ~~[minor]~~ child was engaged in a lawful employment or volunteer work at a recognized charity institution or was going to or coming from such activity without detour or stop;
- (e) The ~~[minor]~~ child was on the sidewalk of the place where such ~~[minor]~~ child resides or on the sidewalk of a place where the ~~[minor]~~ child had permission from his or her parent or guardian to be;
- (f) The ~~[minor]~~ child was in a motor vehicle involved in intrastate or interstate transportation or transportation for which passage through the curfew area was the most direct route;
- (g) The ~~[minor]~~ child was exercising his or her First Amendment Rights protected by the United States or Texas Constitution, including, but not limited to the free exercise of religion, freedom of speech, and freedom of assembly;
- (h) The ~~[minor]~~ child is married or had been married or had disabilities of minority removed in accordance with V.T.C.A., Family Code ch. 31.
- (i) With respect to subsection 21-122(b) of this article, that the ~~[offense]~~ violation occurred during the scheduled vacation of or on a holiday observed by the school in which the ~~[minor]~~ child was enrolled; or that the ~~[minor]~~ child had graduated from high school or received a high school equivalency certificate; or that the ~~[minor]~~ child had permission to be absent from school or be in a public place from an authorized school official. In the case of a ~~[minor]~~ child being educated in a home school, a parent shall be deemed a school official.

Sec. 21-124. - Enforcement procedure.

- (a) Any peace officer, upon finding a ~~[minor]~~ child in violation of section 21-122 of the City Code, may transport the child to the Juvenile Curfew Processing Office in accordance with Art. 45.059(a)(3) of the Code of Criminal Procedure. Upon transport, the peace officer may determine the name and address of the ~~[minor]~~ child, and the name and address of his or her parent(s) or guardian(s) and may issue a warning notice or a citation to the parent(s) or guardian(s) of the child.
- (1) ~~[Upon issuance of a warning notice the notice shall be forwarded to the San Antonio Police Department, which shall send a letter to the parent(s) or guardian(s) of the minor advising of the fact that the minor was found in violation of this article and soliciting cooperation in the future.]~~
- ~~[(2)](1)~~ Upon issuance of a citation, ~~[the peace officer may transfer the case to proper authorities for handling under the provisions of V.T.C.A., Family Code tit. 3. In addition,]~~ a complaint will be filed against the parent(s) or guardian(s) in municipal court for violation of City Code subsection 21-122(c). The police department shall file all necessary legal papers, supply all necessary documentation, and provide necessary testimony as required for pursuing violation of this article ~~[by either the minor or]~~ by any parent(s) or guardian(s).
- ~~[(b)]~~ ~~[Any peace officer, upon finding a minor in violation of section 21-122 of the City Code who has previously been issued a warning or citation as provided for in subsection (a) above, shall transfer the case to proper authorities for handling under the provisions of V.T.C.A., Family Code tit. 3. In addition, a complaint will be filed against the minor and any parent(s) or guardian(s) in municipal court for violation of subsections 21-122(b) and (c) hereof. The police department shall file all necessary legal papers, supply all necessary documentation, and provide necessary testimony as required for pursuing violation of this article by either the minor or by any parent(s) or guardian(s).]~~
- ~~[(c)]~~ ~~[In addition to the issuance of a warning notice or citation, the San Antonio Police Department may schedule a person to person conference with the parent(s) or guardian(s) of the minor and the minor concerning this curfew article and the city's expectation and requirement for parental control.]~~

Sec. 21-125. - Penalties.

- (a) Any ~~[minor]~~ child violating the provisions of this article may be referred to the Juvenile Case Management Department of the San Antonio Municipal Court/Truancy Court ~~[shall be guilty of a Class C misdemeanor as defined in the Texas Penal Code].~~
- (b) Parent(s) or guardian(s) of a ~~[minor]~~ child violating this article shall be guilty of a misdemeanor, which shall be punishable by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00).

(c) In assessing punishment for either any parent(s), or guardian(s) [~~or a minor~~], the municipal court judges are encouraged to consider the community service program.

SECTION 3. Should any portion of this ordinance for any reason be held illegal, inoperative, invalid, unconstitutional or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted or ordained without the portion held to be illegal, inoperative, invalid, unconstitutional, or ineffective.

SECTION 4. The publishers of the City Code of San Antonio, Texas are authorized to amend said Code to reflect the changes adopted herein and to correct typographical errors and to format and number paragraphs to conform to the existing Code.

SECTION 5. The City Clerk of the City of San Antonio is hereby directed to publish notice of this Ordinance as required by Section 17 of the Charter of the City of San Antonio and the laws of the State of Texas.

SECTION 6. This ordinance shall take effect on June , 2018.

PASSED AND APPROVED this _____ day of _____, 2018.

MAYOR
Ron Nierenberg

ATTEST:

APPROVED AS TO FORM:

Leticia Vacek
City Clerk

Andrew Segovia
City Attorney