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AN ORDINANCE AMENDING TITLE 10 (PUBLIC PEACE, MORALS & WELFARE), SECTIONS 10.20.010 (CURFEW - DEFINITIONS); 10.20.020 (CURFEW - OFFENSES); 10.20.030 (CURFEW - DEFENSES); 10.20.040 (CURFEW - ENFORCEMENT); 10.20.050 (CURFEW - VIOLATION - PENALTY); AND 10.20.054 (CURFEW - REVIEW OF ORDINANCE), OF THE EL PASO MUNICIPAL CODE; READOPTING SAID PROVISIONS; REVISING THE DEFINITIONS AND PROCEDURES FOR HANDLING VIOLATORS; AMENDING THE PROVISIONS ESTABLISHING OFFENSES AND DEFENSES; REVISING THE ORDINANCE REVIEW PROCEDURES; THE PENALTY BEING AS PROVIDED IN SECTION 10.20.050 OF THE EL PASO MUNICIPAL CODE.

WHEREAS, the City Council finds and determines that circumstances persist in the City of El Paso which demonstrate the appropriateness of the continued existence of the city's curfew ordinance; and

WHEREAS, the City Council finds and determines that it is now appropriate to revise some of the definitions, defenses and procedures established in the city's curfew ordinance; and

WHEREAS, the City of El Paso has had a curfew ordinance in effect since 1943, and the most recent amendments to the curfew ordinance were adopted on October 8, 1991, it is impossible for the City to conduct a review of the curfew ordinance prior to the third anniversary of the date of the adoption of the ordinance as specifically stated in Section 370.002, Texas Local Govt Code, therefore, it is necessary to establish appropriate review provisions by ordinance to comply with the intent of the legislative enactment; and

WHEREAS, some of these changes are made to reflect amendments to the Juvenile Justice Code made by the 74th Texas Legislature.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

Section 1. That Section 10.20.010, "Curfew - Definitions," of the El Paso Municipal Code is readopted and amended as follows:

Section 10.20.010. Curfew - Definitions.

In this section:

A. "Chief of Police" means the chief of police of the City of El Paso or a designated representative.

B. "Curfew Hours" means the period beginning at 11:00 p.m. and ending at 6:00 a.m. of the following day. The time shall be determined by the prevailing standard of time, whether Mountain Standard Time or Mountain Daylight Savings time, generally observed at that hour by the public in El Paso. The time then observed in the El Paso Police Department's Communications Divisions shall be prima facie evidence of the true and correct time.

C. "Direct Route" means the shortest path of travel through a public place to reach a final destination without any detour or stop along the way.

D. "Emergency" means, 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.

E. "Minor" means a person who is under the age of 17 years of age.

F. "Parent" means a person who is:

1. a natural or adoptive parent or step-parent of the minor;
2. a court-appointed guardian of the minor or the public or private agency with whom the minor has been placed by a court; or
3. a custodian, at least 18 years of age, and with whom the minor resides.

G. "Public Place" means any street, alley, highway, sidewalk, driveway, yard, playground, park, plaza, building, or other place used by or open to the public. The term "street" includes the legal right-of-way, including but not limited to the traffic lanes, curb, sidewalk, whether paved or unpaved, parkway and any grass plots or other grounds found within the legal right-of-way of a street.

H. "Remain" means to:

1. linger, stop, or stay for any length of time, or to travel or move upon a street; or

2. fail to leave premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.

I. "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.

Section 2. That Section 10.20.020, "Curfew - Offenses," of the El Paso Municipal Code is readopted and amended as follows:

Section 10.20.020. Curfew - Offenses.

A. A minor commits an offense if he remains in any public place or on the premises of any establishment within the city limits during curfew hours.

B. A parent of a minor commits an offense if he knowingly permits, or by insufficient control allows, the minor to remain in any public place within the city limits during curfew hours.

C. A parent of a minor commits an offense if he knowingly fails to respond within two hours of receipt of any notification by a law enforcement officer to take custody of a minor taken into custody for violation of this section, unless reasonably hindered from doing so.

Section 3. That Section 10.20.030, "Curfew - Exceptions - Defenses," of the El Paso Municipal Code is amended as follows:

Section 10.20.030, Curfew - Affirmative Defenses.

A. It is a defense to prosecution under Section 10.20.020 that the minor was:

1. accompanied by the minor's parent;

2. on an errand at the direction of the minor's parent, was using a direct route, and was carrying a written communication signed by the parent stating a brief description of the errand and that the named minor has consent to perform such errand;

3. in a motor vehicle engaged in interstate travel, beginning, ending or passing through El Paso;
4. engaged in an employment activity, including but not limited to newspaper delivery, and was using a direct route;
5. involved in an emergency;
6. on the driveway or yard of the minor's residence or on the sidewalk abutting the minor's residence;
7. on the sidewalk abutting the residence of a next-door neighbor if the neighbor did not complain to the police officer about the minor's presence;
8. attending an official school, civic or religious activity or returning home by a direct route from an official school, civic or religious activity;
9. attending or traveling directly to or from an activity involving the exercise of First Amendment rights protected by the United States Constitution, including the free exercise of religion, freedom of speech, and the right of assembly;
10. married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code; or
11. accompanied by a person at least twenty-one years of age, and the minor was carrying a written communication signed by the parent stating the name of the person who is at least twenty-one years of age and accompanying the minor and that the named minor has consent to be in the company of that named person.

B. Each of the foregoing defenses, and their several limitations, are severable, as hereinafter provided but reemphasized here.

Section 4. That Section 10.20.040, "Curfew - Enforcement," of the El Paso Municipal Code is readopted and amended as follows:

Section 10.20.040, Curfew - Enforcement.

A. A police officer, upon finding a minor in violation of Section 10.20.020 shall take the necessary steps to determine whether the minor is remaining in a public place in the city limits in violation of Section 10.20.020 and whether any

defenses under Section 10.20.030 may apply to the actions or activities of the minor. If the officer has probable cause to believe that the minor is in violation of Section 10.20.020, the officer may take appropriate enforcement action against the minor in accordance with applicable provisions of the Juvenile Justice Code, the Texas Penal Code, and this ordinance.

B. If a minor is taken into custody under this section, the officer shall, without unnecessary delay:

1. release the minor to the minor's parent, guardian, or custodian;
2. take the minor before a municipal court to answer the charge; or
3. take the minor to a place designated by the chief of police as a juvenile curfew processing office.

C. When a minor is issued a citation or taken into custody for a violation of Section 10.20.020, the police department may, by certified mail return receipt requested, notify a parent of the minor that the minor has violated Section 10.20.020 and include a warning that any subsequent violation may result in prosecution of the minor and the parent under this section.

Section 5. That Section 10.20.050, "Curfew - Violation - Penalty," of the El Paso Municipal Code is readopted and amended as follows:

Section 10.20.050, Curfew - Violation - Penalty.

A. Any minor who violates Section 10.20.020 of this code shall be guilty of a misdemeanor and shall be punished by a fine as provided in Sections 1.08.010 through 1.08.030 and may be subject to appropriate action by a juvenile court in accordance with applicable provisions of the Juvenile Justice Code, the Texas Penal Code, and this ordinance.

B. A parent of a minor who violates any provision of Section 10.20.020 shall be guilty of a misdemeanor and shall be punished by a fine as provided in Sections 1.08.010 through 1.08.030 of this code.

Section 6. That Section 10.20.052, "Curfew - Construction," of the El Paso Municipal Code is readopted and amended as follows:

A. Severability is intended throughout and within the provisions of the curfew ordinance. If any provision, including inter alia any exception, defense, subsection, part, phrase, term, or word, or the application thereof to any person or circumstance is held invalid or unconstitutional by valid judgment or decree of a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the ordinance codified in this chapter, and such remaining portions shall remain in full force and effect.

B. It is intended that the curfew ordinance be held inapplicable in any cases, if any, where its application would be unconstitutional. A constitutional construction is intended and shall be given. The city council does not intend to violate the Constitution of the state or the Constitution of the United States of America, and does not intend an interpretation of the ordinance or an application thereof which is absurd, impossible, or unreasonable.

Section 7. That Section 10.20.054, "Curfew - Review of Ordinance," of the El Paso Municipal Code is readopted and amended as follows:

Section 10.20.054, Curfew - Review of Ordinance.

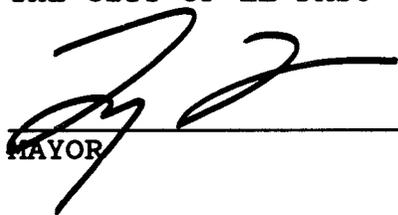
The City Council hereby finds that the review of this ordinance done by the City immediately prior to and in conjunction with the passage of the readoption and amendments made herein satisfies the requirements set forth in Section 370.002, Texas Local Govt Code, for certain required reviews of curfew ordinances by home-rule municipalities. The dates for the statutorily required ordinance review every third year thereafter shall be based upon this readoption.

Section 8. Except as herein readopted and amended, Title 10 (Public Peace, Morals & Welfare) of the El Paso Municipal Code shall remain in full force and effect.

PASSED AND APPROVED this 26th day of March, 1996.

(signatures on the following page)

THE CITY OF EL PASO


MAYOR

ATTEST:


City Clerk

APPROVED AS TO CONTENT:

Russ Leach
Chief of Police

APPROVED AS TO FORM:


Elaine S. Hengen
Assistant City Attorney